***United States Court of Appeals***

***for the Second Circuit***

# JOINT APPENDIX

# 76-6161

# United States Court of Appeals

## For the Second Circuit.

SECURITIES and EXCHANGE COMMISSION,
*Plaintiff-Appellee,*

*against*

GALAXY FOODS, INC., ARTHUR LIEBERMAN a/k/a ARTY LEE, RALPH AVNI, CHARLES HOROWITZ, BRUCE KATZ, STEVEN ROTH, MARK GLAZER, IRWIN DONALD KIRSCHENBLATT a/k/a DONALD KIRSCH, GEORGE PADILLA, ARTHUR SHEVACK,
*Defendants,*

IRWIN DONALD KIRSCHENBLATT, a/k/a DONALD KIRSCH and ARTHUR SHEVACK,
*Defendants-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

## JOINT APPENDIX.

## Volume III—Pages 855 to 1340.


GOIDEL, GOIDEL & HELFENSTEIN, P. C.
*Attorneys for Defendants-Appellants*
127 John Street
New York, N. Y. 10038

WILLIAM D. MORAN
*Regional Administrator, Securities and Exchange Commission, Attorney for Plaintiff-Appellee*
26 Federal Plaza
New York, N. Y. 10007



THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1976





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THE COURT: I understand what the point is.

MR. GOIDEL: Sure.

THE COURT: I do understand, I do understand Mr. Lerner's objection about asking this witness, who I presume is not a lawyer?

THE WITNESS: That is correct, your Honor.

THE COURT: For a legal conclusion. But, on the other hand, I do think this witness would be competent to testify as to whether he and the other two board of directors ever took any action which he considered authorized others associated with the company to, one might say, override the acts of the directors. Or the authority of the directors.

Q Did you ever confer such power on any group, sir, to override a decision of the board of directors?

A No one ever over -- overrode, if that is the correct term, a decision of the board of directors.

MR. LERNER: Objection. That is not responsive to the question.

Q Did you -- do you know of anyone authorized to do this?

A There was no one authorized to do this.

Q Sir, as a matter of fact, you previously testified, if I am correct, that the board of directors

in essence, vetoed or had the vetoe power over any decision of the executive board?

A That's correct.

Q I think you said also on your most recent testimony in answer to some of Mr. Lerner's questions, that it wasn't actually taken -- that a vote wasn't actually taken, that there was a discussion but no vote, is that correct?

A I don't believe a formal vote -- we are talking about the ad?

Q Yes.

A Specifically the -- I don't believe there was a formal vote taken, that's correct.

Q When did the board of directors meet? Do you know of any meetings ever held by the board of directors?

A I believe we had three of them. During the entire time of Galaxy Foods was in operation.

Q Three formal meetings?

A That's correct.

Q Where notices or waivers of notices of meetings were signed and so forth?

A I believe that is the case.

Q Yes. How about these meetings when occasionally you would pick yourself up at an executive board meeting and the three, the triumvirate would then walk into

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another room and discuss.

MR. LERNER: Objection. Characterizing.

MR. GOIDEL: What, the triumvirate. I am sorry. The three members.

MR. LERNER: Thank you.

MR. GOIDEL: The three members would walk in another room and have a discussion and then return back? This happened frequently?

THE WITNESS: No. Very infrequently.

Q How frequently?

A Perhaps four or five times or six times during the entire time.

Q You say that Mr. Kirsch participated at the "Close of Sales during Opportunity Meetings?

A That's correct.

Q Tell us what is meant by "Close of Sales?"

A Well, to be brief, there are many ways to close a sale. We have certain steps. There are 15 closes that we taught.

Q Tell me specifically what Mr. Kirsch did. Don't tell me about close of sales as such. Tell me about close of sales in relation to what Mr. Kirsch specifically did that you observed him do?

A Okay. He took -- sat down with guests or stood, talked to guests about the company. He told them

about specifically list marketing things, background in marketing, what the company was going to be doing. Told them -- he's ask them what we used to call closing questions. In other words, when -- asking them when they would be coming into the business. He asked questions about their own background. He was anxious to know if any of them could be a help in his department.

Q Would it be fair to say that the discussions that Mr. Kirsch had concerned themselves with the retailing of food?

MR. LERNER: If the witness knows, your Honor.

MR. GOIDEL: He has testified to your question that he knows.

A We are talking about --

Q Substantive statements?

A In general, yes.

MR. LERNER: Is there a -- I will let it go. I don't know what he means by that.

Q At the time of the sale of a franchise to Mr. Werner Kunst, where did he live?

A He was living with Mr. Quack.

Q Where?

A On Ninth Avenue in Brooklyn.

Q For how long did Mr. Kunst live there? If you know?

A Several months, I believe.

Q When is the last time you saw Mr. Kunst?

A In 1972.

Q When was the first time you saw him?

A In late 1971.

Q And when in 1972 did you last see him?

A The last part of 1971.

Q So that for a period of approximately 12 or 13 months, over that 12 or 13 month period you had occassion on more than one occassion to see Mr. Kunst?

A That's correct.

Q Is that correct?

A Yes.

Q In New York?

A Yes.

Q At Mr. Kunst's house?

A No. As a matter of fact, at the -- once at once at the office and once at the warehouse.

Q Now, you were asked some questions about Mr. DeSiglia. I think you said Mr. DeSiglia will be here tomorrow?

MR. LERNER: That's right.

Q Have you ever visited Mr. DeSiglia at his home?

A No, I did not.

Q You say you believed he lived in New York, is that correct?

A That's correct.

Q But you never visited him at his home?

A That's correct.

A Okay, now, you made mention of various documents handed out at training sessions. Amongst them I believe was -- may I have the exhibits you just used?

MR. LERNER: Yes.

MR. GOIDEL: I withdraw my question.

Q Sir, I show you Plaintiff's Exhibit 17. Was that handed out at training sessions, at Opportunity Meetings or at Step-up Sessions?

A To my knowledge, it was only handed out at Opportunity Meetings.

Q Fine. Was anything handed out at training sessions?

A No, not to my knowledge. No.

Q You heard Mr. Kirsch testify that he spoke at training sessions and that he only spoke at one Opportunity Meeting?

A That's correct.

Q I believe you, several days ago, acknowledged that to be correct?

A That's correct.

35 fls.

RECROSS-EXAMINATION

BY MR. GOIDEL (Cont'd):

Q If at an executive board meeting a member of that board of directors disagreed with other members, or even the majority of the board, would his disagreement in any way, manner of shape be recorded or evidence in an official record of the corporation?

A I don't believe so.

Q Would you have any independent recollection of any meetings at which Mr. Kirsch agreed with the majority of those in attendance on any specific item?

A I suppose I could. I suppose I do have an independent recollection where he agreed with the majority.

Q Would that agreement have been evidenced by a vote of any type?

A Well, there were a few times that we conducted votes, but --

Q Did you record the outcome of those votes?

A We didn't record the outcome of the votes.

Q Can you think of a specific subject upon which a vote was taken?

A I'd have to think about it under less pressure than in front of a Court where I am sworn to an oath.

MR. GOIDEL: Your Honor, it is now 10 minutes

to 1:00. Do you think we could give this witness another hour during lunchtime to think of an answer to that question?

THE COURT: Another hour? You mean two hours?

MR. GOIDEL: One hour from now to think of the answer to that question, because I have a whole series of questions which will --

THE COURT: Are you suggesting we start again at 2:00?

MR. GOIDEL: Yes. 2:05.

THE COURT: I will make it 2:05.

(Luncheon recess.)

fols.

2:20 p.m.

A R T H U R L I E B E R M A N, resumed the stand and continued to testify as follows:

CROSS-EXAMINATION

BY MR. GOIDEL (cont'd):

MR. GOIDEL: Mr. Reporter, would you read back the last question, please?

THE COURT: He can't. He hasn't got it. We have a different reporter.

Weren't you dealing with the presence of Mr. Kirsch?

MR. GOIDEL: Yes.

Q As a matter of fact, I had asked you, sir, if you could recall any specific vote taken with regard to any specific policy determination at an executive board meeting, and you were going to try to refresh your recollection.

A And I have done so.

Q And?

A Yes, there was a particular vote taken in regards to a suggestion from Mr. Horowitz about raising the price of distributorships.

Q From what to what, sir? From what sum to what sum?

A I do not recall.

Q And what was the vote in favor or against?

A Opposed.

Q I see. Fine. Can you think of any other vote that was taken?

A Not a formal vote, no.

Q Now, sir, I had previously asked you to bring to court a balance sheet of futures -- of Galaxy Foods. Now I show you this, sir, (handing). Is that such a balance sheet?

A Yes, but it is incomplete. It lacks one page.

Q It lacks one page?

A That's correct.

Q Do you know what was on the one page that is missing?

A Yes, I do.

Q What, sir?

A An opinion from the attorneys representing Galaxy Foods as to whether or not a security was involved.

Q That was part of the certified public accountant's statement?

A That is correct.

Q And what was the opinion, if you recall?

MR. LERNER: Does the best evidence rule come into effect here? Do we have a copy of that opinion available?

Q Is there such a copy available, sir?

A I believe the Commission has one. As a matter of fact, I am sure the Commission has one.

MR. LERNER: We will supply it, your Honor, if we have it.

Q Well, absent that page, does that adequately reflect what was given to you as relates to the -- constituting a balance sheet for Galaxy Foods for a particular period?

A That's correct.

THE COURT: Did I understand you to say this was the opinion of an accountant?

THE WITNESS: No. It was the opinion of two attorneys, your Honor.

THE COURT: Oh.

Q All right. Now, sir, this document came up at a time when I was questioning you with regard to expenditures that had been made by the corporation for the purchase of foods.

A That's correct.

Q Do you remember that?

A Yes.

Q Now, by looking at this document, sir, does it refresh your recollection as to how much monies had been expended by the corporation in the purchase of foods in connection with its retail operation?

A It says cost of goods purchased $201,630.

Q Sir, does that reflect purchases of food?

A Yes, it does.

MR. GOIDEL: Sir, I offer this in evidence.

Q Sir, was this certified public accountant's statement prepared at the request of the corporation?

A Yes, it was.

Q In connection with its normal day-to-day operation?

A That's correct.

THE COURT: Has that been numbered as yet?

MR. LERNER: No. We don't have an exhibit number.

THE COURT: Maybe it should be marked the next Defendant's exhibit in order.

THE CLERK: Yes, your Honor. P. So marked in evidence for identification.

(So marked.)

MR. GOIDEL: Your Honor, while he is studying this, we agreed during our lunch hour that we could eliminate the next witness by stipulating on to the record what he would have said had he been put on the stand.

THE COURT: All right.

MR. GOIDEL: So I think that might assist the Court a little bit.

THE COURT: I commend all counsel for their willingness to cooperate with the Court's need for time wherever possible.

MR. LERNER: We don't have any objection.

THE COURT: All right. May I have it please?

(So marked in evidence, a 4-page document, Defendant's exhibit.)

Q Now, sir, anticipating the offer into evidence of certain documents that I have had an opportunity to look at during the recess, I'd like to ask you a question:

Communications that were sent to, and I quote for you, "all field managers or -- that is" -- or to all distributors and field managers.

I take it, sir, that that heading denotes that the individuals to whom the letters were mailed had

already purchased franchises in connection with the operation of Galaxy Foods?

A That's correct.

Q They were not prospective purchasers?

A That's correct.

Q Is that correct?

A It is.

MR. GOIDEL: Your Honor, I would have no objection, then, when these documents are offered into evidence.

THE COURT: All right.

MR. LERNER: Thank you.

MR. GOIDEL: And, your Honor, I have no further questions of this witness.

MR. LERNER: Your Honor, I have about two or three questions.

THE COURT: All right.

MR. PADILLA: I have some questions.

MR. LERNER: I'm sorry.

THE COURT: Oh, that's right. Sorry, Mr. Padilla.

MR. PADILLA: All right.

THE COURT: You are so quiet over there.

MR. PADILLA: Just tired, your Honor.

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CROSS-EXAMINATION

BY MR. PADILLA:

Q Mr. Lieberman, related to Plaintiff's Exhibit number 7, to your knowledge, did I have anything to do with the preparation or the placing of this ad in the newspaper or/and whatever contents to your knowledge did I have anything to do with this?

A You did not.

Q Plaintiff's Exhibit 14A and 14; 14 and 14A, did I have anything to do with the preparation of this, placing it in he newspaper, any newspaper or anything whatsoever with the contents of this ad?

A You did not.

THE WITNESS: Your Honor, may we clarify the record on some of my past testimony regarding those three exhibits, 7, 14 and 14 --

THE COUR Why don't we wait and see? Your counsel have -- counsel for the Commission will have an opportunity on redirect to straighten anything out that needs straightening out.

What about the Spanish publication?

MR. PADILLA: I am going to ask that.

Q To your knowledge, in Plaintiff's Exhibit 15, which is the Spanish ad, did I have anything to do with the

preparation or obtaining permission to place this ad or placing this ad in the paper?

A I don't believe -- 15 is not the --

Q I am sorry. I have the wrong one. Change that and that will be Plaintiff's Exhibit 16 instead of 15 we are talking about.

Did I have anything to do with the preparation of this ad, placing this ad in the newspaper or anything to do with whatever it contains?

A To the best of my recollection you did not.

Q Plaintiff's Exhibit 15, did I have anything to do with the preparation or with the placing this ad in the newspaper or anything to do with the contents of this ad?

A Is that the Buffalo one?

Q This is the Buffalo one.

A You did not.

Q Plaintiff's Exhibit 17, did I have anything do with the preparation or with the material contained herein, information or -- and did I in any way speak to this reporter or did I give him any of this information at all?

A You did not.

Q This one is signed Steven -- Plaintiff's Exhibit 22, letter signed by Steven Roth, did I have anything

to do with this? (Handing).

THE COURT: You mean with the sending of it?

MR. PADILLA: Signed by Steven Roth. I want to know if I had anything to do with the preparation of it or mailing it or in any way with the contents of it.

A It was the contents, of course, -- I have to read it, you Honor.

(Witness reading letter.)

A (Continuing) To my knowledge you did not.

Q I give you this to look over (handing). Earlier during the first cross-examination you had testified that you didn't remember what the position of Walter Martin was in Galaxy Foods.

Does this Plaintiff's Exhibit -- what?

A 23.

Q Plaintiff's Exhibit 23, does that in anyway refresh your memory as to what Mr. Martin's position was in Galaxy Foods?

A Yes. I am afraid it does. It says on the bottom Walter Martin, vice president, field operations.

Q Did I have anything to do with the preparation of this instrument or anything with the contents of this instrument?

A You did not.

MR. PADILLA: I have no further questions.

THE COURT: All right, Mr. Padilla. Now, Mr. Lerner.

MR. LERNER: Just two or three questions.

REDIRECT EXAMINATION

BY MR. LERNER:

Q Did Mr. Padilla have anything to do with the preparation of this document, Mr. Lieberman (handing)?

A Yes, he did.

THE COURT: Is that one already marked?

MR. LERNER: No, it is not.

Q Did you see this document before?

A Yes, I did.

Q And did it emanate from the company?

A Yes, it did.

Q Was it kept in the ordinary course of business of the company?

A Yes, it was.

MR. LERNER: I would like to move this document into evidence as Plaintiff's Exhibit.

THE CLERK: 24 coming up.

MR. PADILLA: I have no objection.

THE CLERK: Is that in evidence?

MR. GOIDEL: No objection.

THE CLERK: So marked: Plaintiff's Exhibit 24 for identification.

(So marked.)

Q Now, you were asked if you could recall any specific instances where a vote was taken by the executive board. There only was one; is that correct?

A That's the specific instance I remember; that's correct.

Q Was it the policy of the board to vote on important issues which came up before the board?

MR. GOIDEL: Objection, your Honor. That would call for a conclusion as to what this witness thinks is important. That would also be conjectural, since we have not established any time, any date nor any place nor any subject matter.

So I would ask that it be either reframed or your Honor sustains the objection.

MR. LERNER: The question goes to whether there was a policy existing before the executive board as to whether they should vote on important issues.

He wasn't asked for anything more than a policy.

MR. GOIDEL: Well, again, who -- who would

determine what's important? I mean, this is the whole object of the objection.

MR. LERNER: Well, regardless of who determined what was important, was there a policy, first, that a vote should be taken on important issues?

THE COURT: Do you percieve the limited nature of the question?

THE WITNESS: Yes, I do, your Honor.

THE COURT: You may answer. I overrule the objection.

A Yes. There was a policy that on party issues, particularly ones that board of directors felt were important, that a vote would be taken, whether it be oral or suggested.

Q And did that policy exist during the life of Galaxy Foods?

A Yes, it did.

Q Now, Mr. Goidel also brought out the fact that these letters were only sent to distributors and field managers who were existing investors of the company; is that right?

A That's right.

Q Let me go one step further; what was the purpose of sending these letters out to distributors and

field managers?

MR. GOIDEL: Objection, your Honor. I said I would have no objection to their being introduced in evidence. Now, I have no such objection. The purpose of the documents will have to speak for themselves at that point.

MR. LERNER: Documents don't always speak about the purpose, your Honor.

THE COURT: By the way, have they been placed in evidence yet?

MR. LERNER: I will mark them as a group.

THE COURT: Is this a different group?

MR. LERNER: Yes.

THE COURT: In addition to the others?

MR. LERNER: In addition to the others.

THE COURT: In addition.

MR. PADILLO: There was one letter you showed me before. Was that involved in there?

MR. LERNER: Take a look and see.

THE COURT: All right. Can you go to something else while we're waiting?

MR. LERNER: You want me to drop away from the purpose of the letters? There was an objection on it.

THE COURT: Well, I'm inclined to agree that the letters would speak for themselves.

MR. LERNER: Okay.

THE COURT: Of course, I haven't seen them. I don't really know what the tenor of the letters really is.

MR. LERNER: Maybe I could rephrase it.

Q Were letters ever sent out, to your knowledge, which -- which were to help existing franchises in soliciting new customers or new people into the business?

A Yes.

THE COURT: Now, what do you call "letters" I take it, are these really communications or bulletins or something of that sort?

MR. LERNER: That is correct, your Honor.

THE COURT: Right.

Q Mr. Kirsch, who we mentioned before, do you know where he lives, by the way, in New York?

MR. GOIDEL: I am sorry. I didn't hear that.

Q Do you know where he lived in New York?

A I have already stated on the record that he was residing with Mr. Quack.

Q Did he reside there as a matter of convenience?

MR. GOIDEL: Objection.

THE COURT: Well, that calls for a conclusion.

MR. LERNER: All right.

Q Do you know whether there was a temporary or permanent residence?

MR. GOIDEL: Objection your Honor. He's already stated how long he remained in New York. That speaks for itself.

Q Did you have a discussion with Mr. Kirsch as to his intentions of residing in New York, either on a permanent or temporary basis?

A Yes. We had discussion on how long he was going to remain, certainly.

Q Did you ever have a discussion as to where he was going to live in New York?

A No. He told us where he was going to live.

Q With Mr. Quack?

A With Mr. Quack.

Q Did he always indicate to you that he had -- did he indicate to you that he had intentions of returning to West Germany?

A Most definitely.

MR. LERNER: I have nothing else.

THE COURT: Nothing else?

MR. LERNER: I just want to mark in -- I move

the admission of these documents into evidence.

THE CLERK: Evidence?

MR. LERNER: Yes.

THE COURT: Now, how do you want to handle that? Do they differ from one another to any great extent or should we just put them in as a group?

MR. LERNER: I'd like to put them in as a group. I believe Mr. Lieberman has testified, well, if he hasn't, I'll show them to him now.

Q Mr. Lieberman, do these letters represent correspondence which was sent by the company, authorized by the company, to field managers and distributors?

If there are any that do not, please remove them from the batch.

A These now do represent memoranda that is -- whatever communications between Galaxy Foods and the existing franchises.

MR. LERNER: Thank you.

I would like to move the admission of those letters into evidence.

MR. GOIDEL: I have no objection.

THE COURT: Yes.

THE CLERK: A group of letters clipped together marked in evidence as Plaintiff's Exhibit

number 25.

MR. LERNER: I'd also like to move into evidence Plaintiff's Exhibit number 23.

MR. GOIDEL: No objection.

THE CLERK: So marked. Plaintiff's Exhibit number 25 in evidence.

MR. LERNER: I have no further questions.

MR. GOIDEL: No further questions, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. LERNER: The Commission calls Harold Back to the stand.

MR. GOIDEL: Do you want to enter that stipulation?

MR. LERNER: Yes.

THE COURT: I wonder if these ought to be securely stapled. I see they are just marked on the back, so they don't fall apart or get detached. Put a staple.

THE CLERK: Sure.

MR. LERNER: Your Honor, during the lunch break, Mr. Goidel and Mr. Padilla and myself were able to eliminate one of the witnesses today pursuant to a stipulation.

The witness was Mr. Charles Horowitz, and he would, if he were called to the stand, he would testify as follows:

That in or about May of 1972, while he was president of the executive board of Galaxy Foods, it was brought to his attention that an application in the name of Paul DeSiglia, reflected the fact that Mr. DeSiglia had an address in New Jersey and that Mr. Horowitz thereafter had discussions with members of Galaxy, who he cannot now remember, concerning what to do about the situation and that it was decided that Mr. -- that an occupation would be offered to Mr. DeSiglia (1) to either establish a legal residence in New York State --

MR. GOIDEL: That is not part of our stipulation.

(Cont'd on next page.)

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MR. LERNER: That Mr. Hurwitz thereafter had a discussion with the Board of Directors of Galaxy and it was decided by the Board of Directors that Mr. DeSiglia would be ordered to either action, obtain a legal residence in New York State or be refunded his money.

Now, Mr. Hurwitz cannot recall speaking to Mr. DeSiglia and conveying this information to him.

Furthermore, if he were called to testify he would state that the books and records refreshed his recollection, that the money was in fact paid back to Mr. DeSiglia in May of 1972.

MR. GOIDEL: That's fine, with the understanding that the SEC will have Mr. DeSiglia in Court to testify.

MR. LERNER: That is our understanding.

Mr. Padilla, do you agree?

MR. PADILLA: Yes. I have no objection.

H O W A R D R A Y B E C K , having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. LERNER:

Q Would you state your full name?

A My name is Howard Ray Beck.

Q Your present residence?

A 583 Lincoln Place, Brooklyn, New York.

Q Are you presently employed?

A I am.

Q What position?

A I work for E. J. Korvette as a salesman.

Q Did you ever hear of a company named Galaxy Foods?

A I did.

Q When for the first time did you hear the name?

A The first time I heard the name was in August of 1971.

Q When you first heard of Galaxy Foods, were you employed?

A Yes.

Q What was your position at that time?

A I was a part-owner of a business with my brother.

Q How long had you been involved in that business?

A Two months.

Q Where were you prior to that time?

A I was in the Army.

Q Could you describe to the Court the circumstances surrounding when you first heard of Galaxy?

A One day in early August of 1971 my brother and I were driving down through the Queens Midtown Tunnel and a

passed us and blew his horn to get us out of his way and he had a flyer and he handed it to us and it had written on it by Galaxy Food, Incorporated, and spoke of making fantastic sums of money and mentioned a young gentleman who was a multimillionaire at the age of 35 and general instructions and had the name Don Kirsch and his telephone number also was on it.

Q You say the circular or this flyer was passed to you while you were going throug the tunnel?

A Yes. They blew their horn and we stuck our hand out the window.

Q Who was driving the car?

A Don Kirsch.

Q How did you know it was Don Kirsch?

A At the time I did not know it.

Q At that time did you know anybody else in the car?

A No.

Q How can you be sure today it was Don Kirsch who was in the car at that time?

A Because I remember what he looked like.

Q You mean you subsequently met Don Kirsch?

A Right.

Q Do you recall whether or not the flyer stated

that this Galaxy Food business was limited to residents of New York State?

MR. GOIDEL: I object to the leading of the witness. I have no objection to the witness describing what he read on what the circular said.

THE COURT: Is there such a circular available, or one like it? Why not show it to him. Ask him if that is it.

Q I will show you now what appears to be a printed copy of what appears to be a letter. It starts with dear friend. Does that refresh your recollection as to what the circular stated which Mr. Kirsch passed to you?

MR. GOIDEL: I object. There is no testimony that Mr. Kirsch passed him anything.

THE COURT: Yes, I recognize that.

Q I will rephrase it.

That you received while you were driving through the Midtown Tunnel.

A Yes, it does.

Q Would you please state what that circular stated?

A Well --

MR. GOIDEL: Objection.

Q Does it refresh your recollection?

THE COURT: I don't want to confuse you or get myself confused, but is that a copy of the circular that was passed to him or does he recognize it as being essentially what was passed to him, one or the other.

Either it was a copy of it or one very similar to it.

MR. LERNER: The importance of the particular document I have just handed Mr. Beck will come to light after several subsequent questions.

THE COURT: All I want to know or have come to light out of the tunnel at this time is whether this piece of paper which you have shown him is a substantial copy of what was passed to him or, let's start with that, substantial copy of the information that was passed to him at the time.

Q Mr. Beck, the document you have before you, is this a document, is it a substantial copy of the copy that was passed to you in the tunnel?

A It is the exact same thing.

THE COURT: Fine.

A Except --

THE COURT: Except what?

THE WITNESS: Except for the changes I put on there to suit my purposes.

THE COURT: You made some changes on this document?

THE WITNESS: Right.

THE COURT: All right, now we are getting somewhere.

Q May I ask him what the document -- what was passed to him since this is not the document --

MR. GOIDEL: He may offer it in evidence but I don't think he has a right to characterize what it says.

MR. LERNER: It is not the document passed to Mr. Beck.

THE COURT: He has explained that it contains certain handwriting, notes of his.

Is that correct?

THE WITNESS: Right.

MR. LERNER: Will the Court accept this as being substantially --

MR. GOIDEL: I may not object.

Q Would you please indicate what changes you have made in the document?

THE COURT: I don't think that is appropriate at this time. All we are talking about is this man's first connection with Galaxy Foods and how it began

and if there is anything else that came up later on that might have occasioned those changes.

Let us take those in order.

MR. LERNER: If I move this document into evidence I fear it is not an accurate description of what was passed to him.

THE COURT: Well, except this document contains some changes he made.

MR. LERNER: Can he testify as to what changes he made so that the record was accurate as to what was passed to him in the tunnel?

THE COURT: But I am sure that -- well, I am not going to say I am sure because one cannot be sure of anything; but I am saying it is quite probable that the handwriting came on there at a later time.

Q There is also printing on the document, your Honor.

THE COURT: I understand that.

You mean hand-printing?

MR. LERNER: This document --

(Side bar discussion out of hearing of the courtroom.)

MR. LERNER: At this time I would like to offer the document identified by Mr. Beck. I would like to

move it into evidence as Plaintiff Exhibit 26.

MR. GOIDEL: I understand that there are certain modifications to this document and we will stipulate to counsel, not that Mr.Kirsch actually had this delivered to this gentleman but that the document alleged to have been delivered to him purports to be substantially the same with the exception of certain handwritten notations appearing thereon as well as the addition of Mr. H. R.

Beck's name to the bottom of that letter in lieu of other or another name and another telephone number is there.

MR. LERNER: Thank you.

THE CLERK: So marked as Plaintiff's Exhibit 26 in evidence.

BY MR. LERNER (Continued):

Q Now, Mr. Beck, where your name appears on this document, was there another name on there when you received the document?

A Yes, Don Kirsch's name was on there.

Q Now, did there come a time, Mr. Beck, when you got in touch with Mr. Kirsch?

A Yes. I called Mr. Kirsch and he eventually got in touch with him.

Q Please explain when you called Mr. Kirsch? Please tell us who you spoke to and what transpired during the conversation.

A I called Mr. Kirsch several times and I wasn't able to get him and I was under the assumption I was speaking to his secretary but actually I was speaking to his wife.

MR. GOIDEL: I object to this characterization as to who he was speaking unless we go through the regular routine of establishing whether he ever had spoken to the person over the telephone, etcetera.

MR. LERNER: We can move to strike the characterization of the secretary and his wife.

THE COURT: I gather what the witness really means to say, he called the telephone number on the slip, the circular, is that correct?

THE WITNESS: Yes.

THE COURT: The number?

THE WITNESS: The number.

THE COURT: And when you made your first call did you make contact with a person?

THE WITNESS: Yes.

THE COURT: Did that person identify himself or herself to you?

THE WITNESS: No, they did not.

THE COURT: Was it a man or a woman?

THE WITNESS: It was a female.

THE COURT: A female.

Now, you spoke to a female.

Did this female appear to be acquainted with the subject matter of your call?

Do you know what I mean?

THE WITNESS: The only thing I can say is that this female told me that Mr. Kirsch was not in at that time.

THE COURT: So she gave you that response?

THE WITNESS: Right.

THE COURT: Kirsch was not in.

All right.

Now, then, at some point in time did you have a telephone conversation with a male?

THE WITNESS: Yes.

THE COURT: How much later?

THE WITNESS: I would say a week later.

THE COURT: So you made several telephone calls of getting this female each time; is that it?

THE WITNESS: Yes.

THE COURT: Then you got, you made one and you got this male.

What did this male have to say, if anything, when you got him?

THE WITNESS: I asked him, I told him I had received a flyer and I asked was he Don Kirsch and he said yes, and I asked him what was the business about and he said it was a new idea of delivering food directly to the consumer and people did not have to go to the supermarkets anymore.

I asked him how much money was involved and he said nothing to $3,000.

He asked me where I lived and invited me to a presentation.

THE COURT: You had never met this Kirsch before in your life?

THE WITNESS: I had never met him before.

THE COURT: And the time before you hadn't met him yet; is that right?

THE WITNESS: Yes.

THE COURT: He asked you to go somewhere?

THE WITNESS: He asked me to come to a presentation.

THE COURT: Did he tell you where that was?

THE WITNESS: Yes.

THE COURT: Where was it?

THE WITNESS: At the Summit Hotel.

THE COURT: In Manhattan?

THE WITNESS: Yes.

THE COURT: Did you go?

THE WITNESS: Yes.

THE COURT: And can you recall the date?

THE WITNESS: i would say the middle of August of 1971.

THE COURT: All right, Mr. Lerner, take it from there.

BY MR. LERNER (Continued):

Q By the way, Mr. Beck, what was it which influenced you to call Mr. Kirsch?

A Well --

MR. GOIDEL: Objection.

THE COURT: No, I will permit that.

A The sums of money that you could make that was mentioned on the flyer.

Q What sums are they?

MR. GOIDEL: Objection. The document speaks for itself.

MR. LERNER: I will withdraw it.

THE COURT: It does in a sense. He said the sums mentioned thereon.

Q Did you in fact attend the meeting?

A Yes.

Q Where was the meeting held?

A The Summit Hotel.

Q Did you meet Mr. Kirsch when you arrived at the meeting?

A No, I did not. He was not present when I arrived at the meeting.

Q Tell the Court what happened when you arrived at the meeting.

A I arrived at the meeting and he mentioned himself as Mark Glasser and he directed me to a seat and he said Mr. Kirsch would be with me shortly.

Q Prior to the beginning of the meeting did Mr. Kirsch show up?

A He did not show up until the presentation had actually started.

Q How many people were at the meeting?

A I would say from 15 to 20 persons.

Q Could you please describe to the Court what took place at the meeting?

A One gentleman came up to the front of the room and introduced himself as John Morino and he went through an introduction speech to introduce an Artie

Lieberman.

Q Did Mr. Lieberman then make a presentation to the audience?

A Yes. He proceeded to give the first part of the presentation.

Q Were there other speakers?

A Yes. There were two more speakers.

THE COURT: Do you remember who they were?

THE WITNESS: Yes.

Q Who were they?

A Bruce Katz and Charlie Horowitz.

Q Do you recall what Mr. Lieberman and Mr. Horowitz spoke about and please begin with Mr. Lieberman.

A Mr. Lieberman spoke about the food industry being the number one industry in the world today, and the great sums of money you could make in this new venture and the fact that during an inflationary period the food industry has continued to grow.

Q And Mr. Horowitz?

A He did the guest spot.

Q Could you give the Court a description of what he spoke about?

A Mr. Horowitz spoke about the actual amount that you could make in Galaxy, using figures.

Q Was there a demonstration?

A There was a demonstration. There was a blackboard and a chart used to demonstrate it.

Q To the best of your ability could you describe to the Court the demonstration that took place?

A Mr. Horowitz came to the front of the room and a lor of people were confused and they didn't know what was happening.

MR. GOIDEL: I object and move to strike it.

THE COURT: I suppose that motion must be granted.

Let me explain, Mr. Beck, you seem to be an observant individual but nevertheless your conclusions, your mental conclusions are not admissible in Court. What persons said or what you saw them do are admissible.

THE WITNESS: Mr. Horowitz came to the front of the room and he raised the blackboard and basically went over the entire presentation very slowly, asking people did they understand the figures and what he was saying as he went along and he was saying, do you believe the figures, do you believe you can make this amount of money and eventually at the end of the presentation he wrote down $60,000 on the blackboard

in big numbers.

Q Was there any audience participation at the meeting?

A There was a question and answer period.

Q Was there, did any other individuals who were in the audience begin to clap when the $60,000 figure was written on the blackboard?

A Yes.

Q Did you observe who began clapping at the meeting?

A Yes.

Q Would you describe who those people were in your own words or where they were located.

A They were located in the back of the room.

The people who were clapping, they were, the majority of them were the people who spoke.

Q Were you introduced to any persons later that evening, who you had previously observed clapping?

A Yes.

Q How were they introduced to you?

A Mr. Kirsch introduced them to me as Mr. Kenneth Rosenthal, Chairman of the Board, Mr. Artie Lee as the corporate president and so on.

THE COURT: Now, Lee, is that the same

gentleman you mentioned earlier as Mr. Lieberman?

THE WITNESS: Yes. I would prefer to use Artie Lee rather than Lieberman.

THE COURT: All right.

You mentioned a Katz. I don't recall you saying what he said.

THE WITNESS: Mr. Katz did the second part of the presentation which actually entails the weekly breakdown and the monthly projection based on a customer ordering $20 in food per week.

Q At the end of the meeting did you have a discussion with anybody?

A I had a discussion with Mr. Kirsch.

Q Approximately how long did the meeting last?

A I would say it lasted from one half-hour to 45 minutes.

Q At the end of the meeting what did Mr. Kirsch discuss with you?

MR. GOIDEL: Objection. Again this goes to the question of leading.

MR. LERNER: I asked if he had a discussion with anybody and he said Mr. Kirsch.

MR. GOIDEL: I know you said at that time, the end of the meeting, as though you were referring him to a specific conversation.

THE COURT: All right, try to refrain from leading the witness.

The meeting lasted one half to 45 minutes?

THE WITNESS: Yes.

THE COURT: Did the witness leave at that time or not?

Q Did you leave after the meeting ended?

A No.

Q What did you do?

A Mr. Kirsch had arrived at the meeting after it was over and he asked me if I understood everything and he went over everything, writing the figures on the papers and asking me did I understand or did I have any questions.

Q Did he just discuss anything else with you?

A After it was over he asked me did I like the idea and I said yes I do like the idea and I would like to go home and think about it and I would get in touch with him again.

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Q Did he reiterate with you how many people could make money in Galaxy?

A No. Except, now, the part that is written on the paper, the part of Mr. Lieberman's presentation.

Q Did you subsequently attend another Galaxy meeting after the first one?

A Yes.

Q Between the first meeting and the second meeting did you have any conversations with anybody concerning Galaxy?

A No, no one except my wife.

Q How many additional Galaxy meetings did you attend after the first?

A One more.

Q Where was that meeting held?

A At the Belmont Plaza Hotel.

Q Do you recall when the meeting was?

A I would say the last of August of 1971.

Q Did you go to the meeting by yourself?

A No. I took my wife with me.

Q What occurred at this meeting?

A There were more people present at this meeting, I would say 20 to 25 people were present and the same thing happened at the first, the presentation was given and the question and answer period and then at the end if someone

said to the person who invited them down there if they liked the idea they were introduced as new field managers or a new distributor and the executives at the company would clap and cheer.

Q After you attended the second meeting did you remain in contact with Mr. Kirsch?

A Yes.

Q Would you explain how you did?

A I told Mr. Kirsch that I would think about it for a week and eventually I would get in contact with him but during this week he called me and asked me and I said I had agreed to come into Galaxy as a field manager.

Q He called you by telephone?

A Yes.

Q What was Mr. Kirsch's reaction when you informed him that you wanted to come in as a field manager?

A He was excited and he suggested that we get together as soon as possible.

Q Did you subsequently get together with Mr. Kirsch?

A Yes.

Q Can you recall when and where?

A I would say the first of September in Flushing New York.

Q And why in Flushing, New York?

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A Because at this time I was living in Great Neck and Mr. Kirsch was living in Queens so he suggested we meet in Flushing.

Q As a convenient location?

A Yes.

Q Did you and Mr. Kirsch have a discussion when you met?

A Yes.

Q Could you please describe what transpired in that discussion?

A When I met Mr. Kirsch I had a personal check on me for $1000 and I gave the check to him.

Mr. Kirsch had an application form that was filled out for the amount of $3000 for the position of distributor and I told him I did not have the $3000.

Q This was after you had informed Mr. Kirsch by phone that you wanted to join the field manager?

A Yes.

MR. LERNER: I would like to have marked as Plaintiff's Exhibit 27 a blue application form for Galaxy Foods.

THE CLERK: So marked.

Q Have you ever seen this before?

A Yes.

Q Exhibit 27?

A Yes.

Q What is it?

A It is the application form for Galaxy Foods Inc. which I signed?

Q Is this the same form in which Mr. Kirsch had originally entered the figure of $3000?

A Yes.

Q Do you want to offer it in evidence?

MR. LERNER: No yet.

I can offer it in evidence, yes.

MR. GOIDEL: May I ask a few questions.

THE COURT: Yes.

VOIR DIRE

BY MR. GOIDEL:

Q Was this made out in your presence or prior to you and Mr. Kirsch meeting?

A When I met Mr. Kirsch he had the $3000 and distributor written in the application.

Q You did not see him write it?

A I did not see him write it.

MR. GOIDEL: I have no objection.

MR. LERNER: Mr. Padilla, would you like to see this?

MR. PADILLA: I have no objection.

THE CLERK: So marked in evidence as Plaintiff's Exhibit 27.

CONTINUED DIRECT EXAMINATION

BY MR. LERNER:

Q One thing I forgot to ask you at the meetings which you attended did you hear any of the speakers indicate that the franchise would be, the investment in Galaxy would be limited to New York State residents?

A No, I did not.

Q What did Mr. Kirsch say to you when you told him that you did not have the money to purchase the distributorship for $3000?

A He suggested that I should come in as a distributor because I could make more money as a distributor than a field manager.

Q But you told him you did not have the money, is that right?

A Yes.

Q What did he say?

A He suggested we go to a bank to apply for a loan for $2000.

Q Did you have any discussions concerning the bank loan?

A I asked him, I told him I didn't think the idea would work, because I hadn't been on my job that long, that I had recently gotten out of the army and did not have any credit references whatsoever.

He said I could use his company as a credit reference and we proceeded to go to a bank.

Q Did he tell you the name of his company?

A He said the name of his company was "K" Enterprises.

Q Did you ever work for "K" Enterprises?

A No.

Q You have stated previously that you gave Mr. Kirsch a check for $1000.

Is that correct?

A Yes.

Q Where did you get that money from?

A I had earlier gotten a business together with my brother --

THE COURT: Was this a Government loan or something that came privately?

THE WITNESS: It was private.

Q Did you use that money?

A I used this money to invest in Galaxy Foods.

Q Did you have any other funds available to invest

in Galaxy?

A No.

Q Prior to your filling the application form did Mr. Kirsch ever tell you that Galaxy, that the investment therein was limited to New York State residents?

A No, he never told me this.

Q Did you eventually go to a bank?

A Yes. Mr. Kirsch and I went to a bank.

Q How did you get to that bank?

A Mr. Kirsch drove me.

Q Why did you go to the --

MR. GOIDEL: Objection.

THE COURT: You can ask what he did but not why.

MR. LERNER: He certainly testified why he went to the bank.

THE COURT: I am interested in one other question, was this a bank with which you had previously done business?

THE WITNESS: No, it was not.

Q Where was the bank located?

A Flushing, New York.

Q What was the name?

A Manufacturers Hanover.

Q Why did you go to the bank?

MR. GOIDEL: Objection.

A I went to the bank to try to borrow an additional $2000.

Q For what purpose?

A To come into Galaxy Food as a distributor rather than a field manager.

Q Prior to going to the bank you had handed Mr. Kirsch the checks; is that correct?

A Yes.

Q Do you know whether or not your application had been accepted at that time?

A By the company?

Q Yes.

A It had not been accepted.

MR. Kirsch had the application and the check with him.

Q Prior to your going into the bank did Mr. Kirsch give you any other instructions in connection with the bank loan?

A Mr. Kirsch suggested that I tell the bank, the people in the bank that I was borrowing the money to buy furniture.

Q Did you in fact go into the bank?

A Yes.

Q Did Mr. Kirsch accompany you into the bank?

A Yes.

Q Did you see a bank officer?

A Yes.

Q Was Mr. Kirsch present with you when you saw that bank officer?

A Yes.

Q What did you tell that bank officer?

A I told him I was interested in borrowing $2000.

I told him I wanted to buy furniture.

Q Did you tell the bank officer where you worked?

A I didn't get a chance to tell him that. He asked me how long I had been at my present job and I said two months and he said no way could I get a loan.

Q In other words the bank rejected your application?

A Right.

MR. GOIDEL: Objection. I don't think he has established he made out an application.

MR. LERNER: I will strike the question.

Q Did you prepare an application?

A No. I spoke to the man in the bank.

Q And he told you what?

A He told me no.

Q Did you leave the bank with Mr. Kirsch then?

A Yes.

Q Did you have a conversation with Mr. Kirsch?

A Yes. He suggested we try another bank.

I told him I didn't like the idea and I wanted to come in at this level and see what the company was about before I elevate it and he said okay.

Q With respect to Exhibit 27, did Mr. Kirsch fill out this application?

A Yes.

Q Did you sign the reverse side of it?

A Yes.

Q Look once again at the application.

Do you notice the word distributor crossed out?

A Yes.

Q Who crossed it out?

A Mr. Kirsch.

Q Did he write anything in lieu of distributor?

A He wrote in field manager.

Q Did he write that in after you left the bank?

MR. GOIDEL: Objection, leading.

A Yes, he did.

Q When did he write it in?

A After he left the bank.

Q Was your application accepted by Galaxy?

A I gave the application to Mr. Kirsch.

Q Did you receive a duplicate of the application thereafter?

A Yes.

Q What did you initially do after you became a field manager with Galaxy?

A After I became a field manager with Galaxy I began working with Mr. Kirsch.

Q Can you describe what you did with Mr. Kirsch?

A We went to different areas, Flushing, Brooklyn, passing out leaflets and this is when I adopted his handbill to use as mine.

Q Were only your leaflets handed out?

A No, Mr. Kirsch's leaflets were handed out and mine.

Q Did you ever speak to any people face to face?

A Yes.

Q Did you ever observe Mr. Kirsch speak to any people face to face?

A Yes.

Q Where?

A Anywhere.

Q Can you be specific?

A Anyplace we stopped to eat or driving on the highway, anytime we could get somebody's attention we would pass them a handbill and talk to them and try to get them to come to a presentation.

Q Did you ever inform or ever hear Mr. Kirsch inform any of these individuals whom you stopped that the Galaxy investment was limited to New York State residents?

A No, I never heard him say that.

Q After you invested your money in Galaxy did you receive training and instruction?

A Yes.

Q Can you describe this training and instruction to the Court?

A These training sessions were held at Galaxy's home office and basically they included cold prospecting, how to go up to a total stranger, grasp his hand and tell him about Galaxy; ask him if he would like to make $60,000 and get him interested and come to a presentation. Also to scrutinize, one person would come up to the front of the room and act as a stranger and the person was to be the distribu or field manager and the executives of the company would watch us and tell us what we were doing wrong.

Q Did anything else occur at these training sessions?

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A Yes. There were classes giving quotations "think and grow rich" and we listened to "Dare to be Great," tapes.

Q When did you receive this training?

A I received it immediately upon coming into Galaxy.

Q Was the retail food sales in operation at this time?

A No.

Q How could one make money by being in Galaxy at this time?

A The only way someone could make money is introducing other people into Galaxy.

Q How would you earn money by doing that?

A By getting commission on people you brought in.

Q In the early days, that is when you joined the company, were you instructed in the delivery of food service?

A No.

Q Was there any instruction given to the best of your recollection concerning the retail end of Galaxy?

A When I initially came into Galaxy there were no instructions given at all.

Q Did there come a time when such instructions commenced ?

A Yes.

Q Please tell us when?

A This was when they started what is called the basic business training course.

Q How soon after you joined that course did it begin?

A I would say the end of November of 1971.

Q In other words approximately a month after you joined?

A Two months.

Q You used the word prospecting in your testimony. Could you explain what is meant by prospecting in accordance with what was taught at Galaxy Training session?

A Going up to total strangers anywhere anytime and introducing yourself, asking them would they like to make $60,000 a year and trying to get them to come into an opportunity presentation.

Q Were you ever instructed on where to go to meet people?

A We were instructed to go to busy places, Penn Station, Grand Central, Kings Plaza, anyplace where you have a large traffic of people, coming into it.

Q Were you instructed to go into detail about the company when you prospected people?

A We were not instructed to go into detail about the companies. We were only to get the person interested in coming to an opportunity meeting and we were taught at these training sessions to meet the heavies of the company and take it from there.

Q What do you mean heavies?

A The executives of the company.

Q What were you told these heavies would do?

A We were taught being we had just came into the company we basically didn't know how to wholesale or how to talk to the guests to get them down there and the executives would take it from there and they would answer all their questions.

THE COURT: Did you ever learn who the heavies were?

THE WITNESS: Yes, your HOnor. I knew who the heavies were.

THE COURT: Who were they?

THE WITNESS: The executives of the company at that time.

THE COURT: By the executives of the company whom do you include in that category?

THE WITNESS: Mr. Kenneth Rosenthal, Mr. Artie Lee, Mr. Ralph Avni, Mr. Charlie Horowitz and Bruce Katz.

THE COURT: Anyone else?

THE WITNESS: That was the heavies then.

Q The heavies change from time to time?

A No. They actually didn't change, but the number invreased.

Q You mean there became more heavies?

A Yes.

Q As time went on who were the other heavies?

A Stephen Roth was considered a heavy.

Q Anyone else that you can think of?

A I would say just that person.

Q Did you consider Donald Kirsch a heavy?

MR. GOIDEL: Objection. That is leading.

MR. LERNER: He has exhausted his memory.

MR. GOIDEL: He has not and has not indicated the need for refreshment.

THE COURT: I think that was suggestive and not called for by the witness' answer. It seems to me that he had pretty well made clear whom he knew to be the heavies.

MR. LERNER: All right.

THE WITNESS: Could I ask a question?

THE COURT: Not while you are on the witness stand.

Q Mr. Beck, was it your understanding from the training sessions --

THE COURT: No, I think we are getting into a leading problem again.

Q Were you aware or did you become aware during your association with Galaxy as to whether any of the people in Galaxy had been associated with Koscot?

A Yes.

Q Who were those people?

A Those people were executives of the company, including the names I have mentioned, all except Stephen Roth and including Don Kirsch.

Q What did you consider your role to be in the Galaxy operation at that time?

A I considered my role to be essentially a field manager which is the low position available in Galaxy.

Q And as far as your functions went --

A My only function at that time was to go out and wholesale.

Q You have described what wholesaling was; is that right?

A Yes.

Q Now, at the training sessions were you taught anything about the attitude?

A Yes. We were taught constantly about our attitudes, not to have negative attitudes. It was required that you think and grow rich.

Q What about your attitude at the meetings, was there any instruction concerning that?

A We were instructed at meetings to show enthusiasm and to clap and cheer whenever something exciting happened.

(Continued on next page)

DIRECT EXAMINATION

BY MR. LERNER (Cont'd):

Q Were you told what the purpose of the clapping and cheering was?

A We were told that the clapping and cheering was to get the guests involved in the enthusiasm.

Q Who told you this?

A The executives of the company told us this.

Q Anybody in particular?

A Artie Lee used to tell us always this.

Q Did you ever hear the term "jack up"?

A Yes, I have.

Q Who used that term?

A Jack up is a favorite phrase of Mr. Artie Lee.

Q Did you know what jack up meant?

A Yes, I knew what it meant.

Q Did Mr. Lee tell you?

A Yes, he told us what it meant.

Q What does it mean?

A Jack up means to get someone thoroughly involved in the idea that they are so enthusiastic about it that they forget everything.

Q After you made your investment in Galaxy, Mr. Beck, did you continue to attend Opportunity Meetings?

A Yes, I did.

Q How many did you attend?

A I would say at least once, one meeting per week.

Q Until when? For how long a period?

A Until February, 1972.

Q February?

A February, 1972.

Q What happened in February' 72?

A In February of 1972, I elevated my position in Galaxy. I became a distributor.

Q How much longer after that did you stay with the company?

A I would say I stayed with the company another nine months to a year.

Q During that time, from time to time did you bring in other investors?

A Yes, I did.

Q Did you earn commission?

A Yes, I did.

Q Could you tell the Court approximately how much you made from Galaxy?

A I made --

Q To the best of your recollection.

A I made almost all my investment back except

for $50.

THE COURT: When you speak of all of your investment, are you now speaking of something like $3,000?

THE WITNESS: Yes, I am, your Honor.

Q Did the numbers, as time went on, did the numbers grow at these Opportunity Meetings?

A Yes, the numbers did grow.

Q Could you describe to the Court how large they became during different periods of the year?

A The number grew from 20 guests to 50 guests and eventually to a hundred.

Q At the Opportunity Meetings, did the cheering and applauding continue?

A The cheering and applauding continued, it became louder; in fact, it became so loud that eventually the guests started complaining about the noise.

Q Were you instructed where to sit at these Opportunity Meetings?

A We were instructed to sit in the rear of the room, if you didn't have a guest. If you had a guest, you tried to sit near the front with them.

Q Have you ever heard of a Sunday Step-Up Meeting?

A Yes, I have.

Q Could you describe what a Sunday Step-up Meeting is?

A A Sunday Step-Up Meeting is a meeting that was held usually at Galaxy's home office or at the warehouse.

What it means is that during your week of prospecting, you have singled out guests that you think have the money, that can afford it, that are interested, and you bring them down to the Step-Up.

At this Step-Up Meeting, the executives of the company, or whoever is speaking, they don't back into the marketing plan of Galaxy, they assume that the guest already understands that part. So what they do is call for projections from the floor and actuallu show how much money you can make on the wholesale and the retail end of the business.

Then, usually the guests are asked to come up to the front of the room and asked if they are going to join Galaxy as a field manager or distributor. Then eventually the checks are passed out and just about every time they would ask one of the guests to actually pass out the checks.

At this time they would also receive a business manual and a "You Can Grow Rich" book.

Q Is this Plaintiff's Exhibit 3 in Evidence the

type of business manual you are referring to?

A Yes.

THE COURT: Did you say yes?

THE WITNESS: Yes.

Q Did you ever speak at an Opportunity Meeting?

A Yes, I did.

Q Did you say what you wanted to say at the meeting?

A No, you couldn't say what you -- you had to say exactly what was printed in the business manual.

Mr. Lieberman used to tell us that when you quoted from the business manual, you were actually under oath, that their lawyers had instructed them to say this.

Q At the Opportunity Meetings, was there ever any discussion from the speakers about the distribution of -- strike that.

Was there ever any discussion concerning customer accounts?

A Yes, there was.

Q Could you please describe what that discussion was about?

A The guest speaker at the Opportunity Meetings would say that to the people in the room that Galaxy would acquire first 10,000 accounts and equally distribute them

among the distributors and field managers in the business at that time.

Q As long as you were with Galaxy, did that distribution ever take place?

A That distribution never took place.

Q Did you ever speak in a guest spot?

A No, I never spoke in a guest spot.

Q Who spoke in the guest spots?

A Usually it was Artie Lee, Charlie Horowitz, any of the heavies spoke in the guest spot.

Q Do you recall when the company -- approximately when the company stated it would make this distribution of customer accounts?

A They stated, you know, when they acquired the warehouse, they were ready to begin retail operations.

Q About what time of the year was it?

A When they first stated this?

Q Yes.

A I would say, I began hearing it in November of 1971.

Q That early?

A That early.

Q Was there also a discussion about the area in which Galaxy would deliver?

A Yes, there was.

Q Could you describe what that discussion was about and where it took place?

A At the Opportunity Meetings and at the training sessions we were told that when Galaxy first began their retail operation that would consist of a 30-mile radius around the warehouse.

Q 30 miles?

A Yes.

Q What did the 30-mile radius mean?

A It represented the area that would be used for the retail.

Q Did that radius every change?

A That radius changed several times.

Q Could you describe how it changed and when it changed?

A I can't remember the exact date when it changed, but when Galaxy actually did acquire their warehouse, it changed to ten, and eventually it changed to three-mile radius.

Q Around the warehouse?

A Yes.

Q At the Opportunity Meetings was there any discussion concerning target dates?

A Yes, there was.

Q Would you explain that?

A As far as I'm concerned, the first target date that I heard was June of 1972.

Q Come June of 1972, what happened?

A They didn't retail. They kept pushing the date back further and further.

Q Were there other target dates?

A There were several.

Q To the best of your knowledge, did they meet any of those target dates?

Q I would say they didn't meet any of them.

Q Was there any discussion at the Opportunities with respect to commissions to be earned on the retail sales?

A Were there any discussion?

Q Yes, did the speakers say how one can earn commissions and whether there would in fact be commissions earned from sales to customers?

A Yes, they said it would. It is in the third part of the presentation the exact commissions that you would earn.

Q While you were with the company, did there come a time when this policy changed?

A There was a time when they changed the commission structure.

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Q When did you leave the company?

A I would say early 1973.

Q When you joined the company, Mr. Beck, did you know how the principals were going to be salaried?

A When I joined the company I was under the opinion that everybody in the company, the only way they made money was actually by wholesaling.

Q Including the principals of the company?

A Including the principals of the company.

Q Did you later find out how they actually became salaried?

A Yes, I did.

Q How was that?

A At the Opportunity Meetings they began to say that they -- that they were receiving one per cent of the total wholesale volume.

Q When did you first hear this representation being made at Opportunity Meetings?

A I would say March or April, 1972.

Q Were you ever aware that any of the executives of the company received free franchises at the time you joined?

A No.

Q Were you aware at the time you joined that

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executives received franchises for services instead of paying for them?

A No.

Q When you first joined, was there any projection made as to when retailing would start?

A When I first joined, the first projected date was June of 1972.

Q Let's go back for a moment, Mr. Beck, to the training sessions.

Do you recall the names of the instructors at these training sessions?

A Yes. The instructors were Artie Lieberman, Kenneth Rosenthal and mainly Bruce Katz.

Q Any other instructors that you can recall?

A As the company eventually got larger, Steven Roth was an instructor also.

Q And you have also testified, I believe, that there were checks handed out at Sunday Step-Up meetings; is that correct?

A Yes, there was.

Q Were you told by anyone at the company why checks were handed out at the meetings?

A Checks were handed out at the Step-Up Meetings to show your guests that you could make money at Galaxy.

Q Who told you this?

A The executives of the companies -- of the company.

Q Were -- was there any applauding or cheering when the checks were being handed out?

A Yes, there was.

Q From where did ithat emanate?

A From the back of the room.

Q From who?

A From the executives of the company.

Q Did distributors and field managers also cheer and applaud?

A Yes, we were taught at the sessions to cheer and clap.

Q Were any of those checks that you observed being handed out ever handed out for the retail operation?

A For the retail --

Q Commissions being paid on the retail operation?

A No.

Q What did they represent?

A They represented wholesale commissions.

Q That is, commissions paid by sponsoring others into the company?

A Right.

Q Mr. Beck, did you keep your own books and records concerning Galaxy?

A Yes, I did.

Q You kept a record of how much money you earned?

A I kept a record of how much money I earned. I have just about every piece of literature that I ever received from Galaxy.

Q Did you ever see Galaxy's warehouse?

A Yes, I did.

Q When?

A When they first acquired it.

Q Was there a tour given?

A Yes, there was a tour given.

Q Could a distributor or field manager go into the warehouse at any time he wished?

A When they first got the warehouse, a distributor or field manager could, but when they actually got the food in there, you were restricted to certain areas.

Q Did you have to make an appointment to go into certain areas?

A Yes, you did.

Q To go into certain areas of the warehouse?

A Yes.

Q You were a member -- did you ever hear of the

Distributors' Association?

A Yes, I did.

Q Were you a member of that association?

A I was a member and I started the Distributors' Association.

Q From what period of time to what period of time?

A I would say from October, 1971, to the arly part of 1972. I served as a memberof the Distributors' Association.

Q Whatever happened to that association?

A Eventually was disbanded by the company.

Q By the company?

THE COURT: Did you say abandoned or banded?

THE WITNESS: Disbanded.

THE COURT: Disbanded.

Q How was the company able to disband the association?

MR. GOIDEL: Objection.

MR. LERNER: Educate me.

THE COURT: I will sustain the objection as to the form and you may inquire of this witness whether he received any notifications of any kind or any communications of any kind which throw any light on this statement of his.

BY MR. LERNER:

Q Were you ever informed as to why the organization was disbanded?

A We were told that --

MR. GOIDEL: Objection. The answer is yes or no, and then who told you.

Q Were you ever informed?

A Yes.

Q Who told you?

A The executives of the company.

Q What did they tell you?

A They told us -- they just said, the Distributors' Association was disbanded.

Q Was there any vote taken by the distributors themselves as to whether they wanted to disband or not?

A There was no vote taken. There was not even a discussion made.

MR. LERNER: I have no further questions.

MR. GOIDEL: Shall I begin my cross-examination, your Honor?

THE COURT: Yes, I'd be interested in having you start.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. GOIDEL:

Q Mr. Beck, I take it that you did unto others what others supposedly did unto you; is that correct?

MR. LERNER: Objection, your Honor.

Q Did you --

MR. LERNER: Would you please define what you mean by what others did and what he did?

Q Mr. Beck, you were a pretty active man in February of 1972, weren't you, as related to your activities with Galaxy Foods?

A Yes, I was.

Q As a matter of fact, you won an award, did you not?

A Yes, I did.

Q What was that award for?

A That award was for bringing in a certain amount of volume for that time period that was considered by the company to be fantastic.

Q On February 4th you were paid $1,250; correct?

A I can't remember the exact date, but if that's what the record shows --

Q In February you did receive a check for $1,250 on one occasion; is that correct?

A I received a check, but I don't know if that is the correct date or not.

Q Sir, the records of the corporation which have already been marked in evidence reveal that on February 4th you received $1,250, on February 13th you received two checks each in the amount of $400, on February 20th you received an additional check for $400.

Would you say that that more or less corresponds with your memory as to what you received in February?

A I would say so.

Q And in addition to that, you were a member of the association?

A Yes, I was.

Q Tell me, Mr. Beck, when was the first time you ever had occasion to speak to the Securities and Exchange Commission with regard to Galaxy Foods, Inc.?

A The first time?

Q Yes.

A In the early part of 1973 I was at a business meeting held at Galaxy's home office on a Friday night and several distributors were asking Mr. Lieberman did he not know that the Securities and Exchange Commission was investigating Galaxy Foods.

Q No, sir, I don't think you quite understood my

question.

I said or I meant to say, when was the first time that you communited or were in communication with the Securities and Exchange Commission with regard to Galaxy Foods?

A As I was saying, after this particular meeting I contacted the Securities and Exchange Commission to see if what Mr. Lieberman was saying was true.

Q Whom did you speak with?

A I spoke to a Mr. Garmansky.

Q What did you say to Mr. Garmansky?

A I asked him were they investigating Galaxy Foods.

Q I assume you were advised that they were?

A Yes.

Q What did you then say or do?

A I referred to him -- I asked him questions about another gentleman that was in Galaxy also.

Q Who was that?

A I can't remember the person's name.

Q Did there come a time when they asked you to testify, come down to a hearing or provide them with information?

A Yes, there was a time.

Q When?

Q I would say the early part of -- no, the latter part of '73.

Q Ten months later, thereabouts?

A Ten months later from what?

Q You say that you first contacted them in early 1973, and now you say that you spoke with them next sometime in the latter part of '73.

A That's not what I'm saying. I would say I contacted them one month and I visited them in the second month, within the same month.

Q Are you aware of the fact that you are purported to have sold more franchises than Mr. Kirsch?

A That is impossible.

Q What if I told you it is not impossible, sir?

A I would have to ask you to prove it.

Q Supposing we already have, sir, would that make you in your own mind think that you were a bigger crook than what you accuse him of being?

MR. LERNER: Objection, your Honor.

MR. GOIDEL: Cross-examination. I can go into anything like that.

MR. LERNER: What does a crook have to do with this type of cross-examination?

MR. GOIDEL: Would you like me to use the word "fraud doer," wrongdoer"?

What word would you like me to use?

MR. LERNER: Your Honor, we have an objection.

THE COURT: Yes. I don't like the use of terms like that.

MR. GOIDEL: I will rephrase my question.

MR. LERNER: If Mr. Goidel is willing to concede that Mr. Kirsch is a crook and a fraud doer, then I will let the question stand.

MR. GOIDEL: Of course not. This gentleman has made the comment in different language.

BY MR. GOIDEL:

Q I will rephrase it.

Sir, are you aware that Mr. Kirsch sold but one franchise and received but one sum of $700 for it? Are you aware of that?

MR. LERNER: Objection, that's not accurate.

Q Are you aware of it?

A No, I am not aware of it.

MR. LERNER: That's not accurate. He's assuming facts not in evidence.

MR. GOIDEL: It is in evidence, and he received $700.

MR. LERNER: He sold three franchises --

MR. GOIDEL: And he received one check of $700.

BY MR. GOIDEL:

Q Now, sir, how many checks did you receive all in all?

A I would say I received four, five checks.

Q I'd say, sir, that you received at least seven. What do you say to that? Does that refresh your memory?

A It does not refresh my memory.

Q You received two checks on February 13th, one on February the 4th, one on February the 29th, one on July 23rd, one on November the 13th, and then you received that $135 check as a gift for winning that special award.

Would you say that I'm in error, sir, or would you like us to produce all the checks here in Court?

A You can produce them if you wish.

MR. GOIDEL: Do you have all the checks from Galaxy Foods?

MR. LERNER: No, we don't.

MR. GARMANSKY: We have some checks. I can't represent we have every single check.

Q Sir, do you deny that you received $2,950 plus the $135 for winning the prize?

A I do not deny it.

Q In other words, you did?

A Yes.

Q And if I were to tell you, sir, that that was represented by seven checks, would you believe that to be accurate?

A Yes, I would.

Q Fine.

A Can I ask you a question?

Q No, sir, you cannot.

Now, sir --

MR. GOIDEL: May I have that exhibit?

THE WITNESS: Could I say something, your Honor?

THE COURT: Unfortunately, not according to the rules. You must confine yourself to answers to questions.

THE WITNESS: I understand that, but there is a point here that was not made, that I think would be lost entirely if it is not made.

THE COURT: Commission counsel will have to depend -- you will have to depend on them to recognize what it is and they will get another opportunity on what we call redirect examination to question you again.

BY MR. GOIDEL:

Q Sir, I show you Exhibit 26, Plaintiffs Exhibit 26. You had these things prepared with your name appearing on the bottom?

A Yes, I did.

Q You substituted your name on the bottom for that which bore the name of Mr. Kirsch and which you say was handed to you through an automobile passing through the tunnel?

A Yes.

Q Is that correct?

A Yes.

Q You paid for the preparation of that, sir?

A Yes, I did.

Q When you had that prepared, sir, was there anything contained on that document that you believed to be false?

A The only thing that I would say that would be false on there would be the part that speaks of the multi-millionaire of 35 years of age.

Q I take it you didn't then meet a 35-year old multi-millionaire who was associated with Galaxy Foods; is that correct?

A Right.

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Q Now, but for that comment, did you believe everything contained on that document to be true?

A Other than what I have stated, I do -- I did.

Q That's one of the reasons why you handed it out; isn't that correct?

A That's right.

Q And if you didn't believe it to be true, you would not have handed it out; am I correct?

MR. GARMANSKY: Objection.

Q Am I correct, if you believe something on here --

MR. GARMANSKY: Mr. Goidel, wait for the Judge's ruling.

MR. GOIDEL: Sorry, you are right.

THE COURT: No. I am going to overrule the objection.

Do you want to have that question read back?

(Question read.)

MR. LERNER: Speculative.

MR. GOIDEL: I believe his Honor has overruled the objection.

Would you answer the question, sir?

Q If you believed the comments contained on here to be called, you would not have handed them out?

A That's right.

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Q Did you ever ask Mr. Kirsch whether he believed the statements contained on here to be true?

A I never asked him that.

Q Did Mr. Kirsch ever indicate to you any reason for believing, either you believing or for his believing that the comments made on here were not true?

A Eventually, Mr. Kirsch explained to me that his flier he had used for another business, and that it really didn't apply to Galaxy but he used it anyway.

Q When did he tell you this?

A He told me this initially after I had invested in Galaxy and when I began to work with him.

Q When?

A I would say the middle of September, 1971.

Q When did you start handing this out?

A I started handing it out, you know, before I had copies made, I was using the same thing, crossing his name out and write my name on it.

Q Then in September he supposedly made this statement to you, and then after September you had this printed up yourself, didn't you?

A Yes, eventually I had my own copies made.

Q I see. So that if I understand you, you then knew that what was contained on here applied not to Galaxy

but to another business that Mr. Kirsch had been associated with; true?

A Yes.

Q And yet you still handed it out as pertaining and purporting to relate to Galaxy Foods?

A Yes, I did.

Q Now, sir, a little while ago you said to me that if you knew that the information contained on this document were false, that you would refrain from handing it out.

Are you now telling us that in spite of the fact that you knew it was false, you still handed it out?

MR. LERNER: Objection. He didn't state the information was false. What may apply to one business may also apply to another business.

Q All right. Is that true, sir, did you believe that what pertained or applied to Mr. Kirsch's former business applied to this business as well?

A I would say yes.

Q Do you have any doubt?

A I have no doubt.

Q In other words, sir, so far as you were concerned, and with the exception of this fifth comment regarding a 35-year old multi-millionaire, everything contained in here is true?

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A Yes.

Q Did there come a time that you began to believe that what was contained in here was not true?

A Yes.

Q When?

A I would say Spring of 1972.

Q Did you resign from the firm?

A No, I didn't.

Q by the way, sir, did you have any discussions with the Securities and Exchange Commission with regard to the possibility of your being a party defendant to litigation?

A Yes, I did.

Q When?

A When I originally contacted them.

Q What did you say to them with regard to the possibility of your being a defendant in an action?

A I told them that, you know, there were things that I -- just about everybody in Galaxy did what I think was illegal.

Q You volunteered this information?

A Yes, I did.

Q What did you specifically tell them that you were doing that was illegal?

A I didn't refer specifically to any point.

Q Well, what did you believe you were doing that was illegal?

A I believe at this time, after being in Galaxy for almost a year and not really seeing any progress, that to bring someone in, you know, would be like a rip-off.

(Continued on next page.)

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Q When did you resign from Galaxy?

A I would say I resigned the early part of 1973.

Q How early in 1973?

A I would say January 1973.

Q Before or after Mr. Kirsch's resignation?

MR. LERNER: I object, your Honor. I don't see the relevancy of the question.

THE COURT: I will overrule the objection. I will let the witness answer, if he knows.

THE WITNESS: I really can't remember when Mr. Kirsch resigned.

MR. LERNER: He hasn't asked him if he knows when Mr. Kirsch resigned.

Q Do you know when Mr. Kirsch resigned?

A I do not.

Q If I were to tell you, sir, that there are in the archives of this corporation a resignation indicating Mr. Kirsch resigned on or about the 14th day of January, 1973, would you say that that refreshed your recollection as to when he left the firm?

A I would say yes.

Q Isn't it a fact, sir, that you remained in the firm beyond the 14th day of January, 1973?

MR. LERNER: Note my objection, your Honor,

as to relevancy.

THE COURT: I will allow it.

Q My question, sir, was, isn't it a fact that you remained associated with the corporation beyond the 14th day of January, 1973?

A I would say yes.

Q As a matter of fact, sir, you were still associated with the corporation in February, were you not?

A I can't remember, sir.

Q Well, now, sir, you spoke with the Securities & Exchange Commission in January of 1973, correct?

A Yes.

MR. LERNER: That's not in evidence.

MR. GOIDEL: He said it. He testified to it.

A I said I think. I'm not really sure.

Q I believe you said your first communication was via the telephone, is that correct?

A Yes.

Q When did you physically go up there?

A I couldn't really put a date on it. The only thing I could say was the early part of 1973.

Q How long after you made that initial telephone call?

A I would say a month.

Q That would put us into February, isn't that correct?

THE COURT: You mean a month after you resigned, is that what you are saying?

THE WITNESS: No.

MR. GOIDEL: A month after the January call is what I think he is saying, your Honor.

THE COURT: Which is it?

THE WITNESS: I am not saying a month after I resigned.

THE COURT: No, but something about a call. You made a call?

THE WITNESS: About a month.

THE COURT: About a month after the call?

Q When you went up there did you go alone?

A Yes, I did.

Q And tell us with whom you spoke.

A I spoke to a Mr. Garmansky.

Q What did you say to Mr. Garmansky?

A I introduced myself. He knew me from the phone call.

Q Had you made an appointment to go up there at the time that you had made that original phone call?

A No, I hadn't made an appointment.

Q Did you make any phone call in between the time of the first phone call and the time that you went up there?

A I would say no. I would say he contacted me.

Q When did the Securities and Exchange Commission contact you after that initial phone call made by you?

A I would say about a month after I called them.

Q They requested that you come up?

A Yes.

Q What did they say to you -- withdraw that.

With whom did you speak, if you know, when you were contacted by the Securities & Exchange Commission?

A I would say it was either Mr. Garmansky or one of his secretaries.

Q When you went up there in furtherance of their request, with whom did you speak?

A To Mr. Garmansky.

Q What did you say to Mr. Garmansky when you went up there?

A I introduced myself as Mr. Beck.

Q Yes. What did Mr. Garmansky say to you?

A He asked me had I ever been in Galaxy Foods.

Q I take it he already knew that because you had made a phone call a month earlier.

A He still asked me.

Q Yes. What else was said? To save us time, tell me what you said to him and what he said to you during the course of this conversation?

A He explained to me that they were investigating Galaxy Foods, Inc.; he asked me did I have any kind of documents.

Q And was anything said at that time to you about the possibility of your being made a party-defendant in litigation?

A Yes, that was the first thing he said.

Q Tell us how the conversation opened up, giving me as close as possible the actual words used by each of you.

A As far as I can remember, Mr. Garmansky explained to me that during the investigation of Galaxy I might be proven as a, you know --

Q As a wrongdoer?

A If you wish to use that term.

Q Did he use that term or some term similar in nature?

A Yes, some term similar in nature.

Q Fine. What did you say to him when he advised you of this?

A I explained to him that I, you know, understood

that.

Q Did you say to him, "Look," in words or in substance, "I'll cooperate with you, but please don't make me a defendant"?

A No, I didn't tell him that.

Q Did you use any words similar to that?

A I don't think they were in a position to not make me a defendant.

Q They didn't make you a defendant, or are you a defendant in some other proceeding commenced by the Securities & Exchange Commission?

A No, I am not.

Q You are not. So somehow it has been avoided, has it not, at least to this moment?

MR. LERNER: Objection, your Honor. He doesn't know what the workings of the Securities & Exchange Commission are.

MR. GOIDEL: We are only talking about whether he was made a party-defendant.

Q Sir, have you been made a party defendant?

A I have not, not to my knowledge.

Q Was anything said to you at that meeting about the possibility of your cooperation and in return your not being made a party-defendant?

A No. They did not tell me that. They told me there was a possibility that I might be made a defendant

Q And notwithstanding that, you assisted them?

A Yes.

Q While still in the corporation?

A Yes.

Q Were you advised to remain in the corporation for the purpose of obtaining information so that it could then be communicatedby you to them?

MR. LERNER: By whom --

A No.

Q By the Securities & Exchange Commission --

A No, I was never --

Q You were never requested to be, let us call it, an undercover agent?

A No.

Q Or a spy?

A Never.

Q Or a communicator of information?

A Never.

Q But you did remain in the firm and did you thereafter communicate with the Securities & Exchange Commission?

A I communicated with them.

Q Voluntarily?

A Voluntarily.

Q You would call them?

A I wouldn't call them, they would call me if they needed additional information on Galaxy.

Q Now, sir, we have got you somewhere past February still in the corporation.

Can you recall when it is you left the firm? Withdraw that.

Q Sir, did you ever submit a resignation?

A I never submitted a resignation.

Q Did you ever tell anybody, "Hey, fellows, I'm not with you anymore, I'm not part of your organization anymore"?

A There came a time when Galaxy tried to terminate me and after this time I just physically dropped out.

Q When was that?

A I can't really remember.

Q Wasn't that sometime, sir, in the latter part of 1973?

A I would say maybe. I really can't remember.

Q Wasn't that after the pilot program had gone into effect?

A Yes, I would say yes.

Q So that you remained in the firm and associated with the firm for a considerable length of time after Mr. Kirsch left; true?

A Maybe.

Q Sir, how fast was your automobile traveling through the tunnel at the time that this leaflet was passed from vehicle to vehicle?

A We slowed down, you know --

Q I would say so, I would hope so. But how fast were you traveling?

A It could have been 30 miles per hour.

Q Were you driving?

A No, my brother was driving.

Q Your brother was driving. So that they didn't hand the document to you, they handed it to somebody on the left of the vehicle?

MR. LERNER: Objection, your Honor. It depends where the car --

MR. GOIDEL: Withdrawn.

Q In which lane were you traveling, the right-hand lane or the left-hand lane?

A It was in the right-hand lane.

Q You were in the right-hand lane?

A Right.

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Q So that the other vehicle was in the left-hand lane?

A Right.

Q Where were you seated in the vehicle in the right-hand lane?

A I was in the right-hand side.

Q On the right-hand side. So that whoever handed something to someone could not have handed it to you sitting in the extreme right-hand side of the car, isn't that true?

A Right.

Q Then it must have been handed to someone else, true?

A True.

Q To whom?

A My brother.

Q The operator of the vehicle?

A Yes.

Q I think you said that you were sitting in the right-hand side of the vehicle and Mr. Kirsch was sitting in the other vehicle, driving the other vehicle, true?

A Right.

Q So that the two cars were parallel, correct?

A Yes.

11 Back-cross

Q While the two cars were parallel you were able to look past your brother through the window, the near window of the other vehicle --

MR. LERNER: Objection. The window had to be down --

MR.GOIDEL: We haven't gotten to that yet.

MR. LERNER: How is he going to look through his window --

MR. GOIDEL: It's glass; you can see tnrough glass. I will rephrase it, Mr. Lerner.

Q But we do have these two cars riding parallel to each other, correct?

A Correct.

Q Was your brother's window lowered?

A Yes.

Q Was the window on the right-hand side of the other vehicle lowered?

A It was.

Q So now we have --

A It was very hot that day.

Q Very hot. Now we have these two cars riding parallel, one with the left-hand window lowered and the other with the right-hand window lowered, correct?

A Yes.

Q Was there somebody sitting in the right-hand front seat of the car being driven by Mr. Kirsch?

A Yes.

Q Do you know who that was?

A At the time I did not know.

Q Did you subsequently learn who that individual was?

A Yes.

Q Who was that individual?

A It was one of the Rodriguez brothers.

Q One of the Rodriguez brothers. How many people were in Mr. Kirsch's vehicle at that time?

A Six people.

Q Six people. Do I take it three in front and three in the rear?

A Yes.

Q What kind of car?

A A Rambler Ambassador.

Q What color?

A Brown or gold.

Q Brown or gold. You had people in the front seat of your vehicle?

A Just two.

Q Just you and your brother?

A Right.

Q Any people in the rear?

A It was a truck.

Q What kind of truck?

A Ordinary van.

Q A van? How high?

A High enough to look over into a car.

Q High enough to look over into a car. Let me ask you this. Was the Rambler lower or higher than your truck?

A Lower.

Q The Rambler was lower. How much lower would you say the roof of the Rambler was from the roof of your van?

A I have no idea.

Q Well now, were you seated above the roof of the Rambler?

A Above the roof?

Q Sure.

A No.

Q Was any part of your body higher than the roof of the Rambler?

A Yes.

Q What part of your body was above the roof of

the Rambler?

A I would say the actual part of the truck that we were in.

Q I say what part of you, sir, not what part of the truck.

A What part of me?

Q Yes.

A I would say all of me.

Q Thank you. Now, sitting in that position, you turned to your left and you looked across your brother, through the window, the open window of your car, through the open window of the other vehicle, past the two people sitting to the right of the driver and observed Mr. Kirsch?

A Yes.

Q You say, Mr. Beck, Mr. Kirsch attended opportunity meetings; yes?

A Yes, he attended opportunity meetings.

Q Did he speak at them or did he sit at them?

A He spoke at them.

Q How often did he speak at them?

A I would say at least once a month.

Q Sir, if I were to tell you that the testimony of at least two persons testifying here so far have stated that Mr. Kirsch spoke at but the first of all opportunity

meetings and that he never spoke at another meeting of that type thereafter, would you say that those other witnesses are in error?

A I would say they were lying or they came into Galaxy at a different time period.

Q Supposing I were to tell you that these two witnesses, sir, predated your entrance into the firm.

A I would say that they were definitely lying.

Q I see. Well now, at these opportunity meetings, you say that Mr. Kirsch attended at least one a month, true?

A Yes.

Q What did he discuss?

A What did he discuss?

Q Yes.

A Usually he did the second part of the presentation.

Q Which was what?

A The part which gets into the weekly breakdown of the person ordering food.

Q Of retailing. Are you confusing opportunity meetings with training sessions?

A No.

Q Did Mr. Kirsch also speak at training sessions?

A From the floor, but, you know, from the seat,

you know. It was like a jam session, but never, he never got in front -- he never stood in front of the group to teach.

Q He did not stand in front of the group to teach retailing at the training sessions, but he discussed retailing at the opportunity meetings?

A When I say training sessions, I'm talking about in the early stage of Galaxy. I'm not saying when he actually became an executive in the company, it was his responsibility to give out information in a certain field.

Q Do you know when he became an executive in the company?

A I can't remember, but it was very early in --

Q Was it after you joined?

A Yes, after.

Q Would it be in the year of 1972 or '71 or '73?

A I would say the early part of 1972.

Q Well, now, sir, did you ever speak at opportunity meetings?

A Yes, I did.

Q Tell us what you said at the opportunity meetings.

A I did the first and the second part, not together, but on different occasions.

Q What is the first or second part?

A The first part is the instruction part. The second part is the weekly breakdown based on retail.

Q That would be the same thing that you say that Mr. Kirsch discussed at those meetings?

A Yes.

Q And tell me, sir, did you say anything false wnen you made your presentation at the opportunity meetings?

A I said exactly what is in the business manual.

Q I am not asking you what is in there, I am asking you whether, when you gave your speech, you knew anything in there to be false.

A No, I didn't think it was false.

MR. GOIDEL: Your Honor, can we have a five minute recess?

THE COURT: Yes.

(Recess.)

(Continued next page.)

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MR. GOIDEL: Thank you, your Honor. I straightened that out, and we are on November 1st, and I know that's pretty safe.

H O W A R D B E C K , having been previously duly Sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. GOIDEL: (continued)

Q Sir, you mentioned something about being in business with your brother.

A Yes.

Q What business was that?

A When I got out of the Army, my brother had a home and office cleaning business in Great Neck, Long Island.

Q And at the time that you first learned of the existence of Galaxy Foods, you were in business with your brother?

A Yes.

Q And I believe you testified on direct examination that you had acquired a private loan to assist you in going into business with your brother?

A Yes. He wanted to expand.

Q He wanted to expand.

When did you obtain this private loan?

A I would say -- Yes, I would say a month prior to

actually giving it to Mr. Kirsch.

Q I see.

So that when you made this private loan, you said to someone, "I would like to borrow money to go into business with my brother because my brother wishes to expand"?

A Yes. In fact, the -- the person -- the organization that I borrowed the money from knew exactly what I was going to do with it.

Q And then, notwithstanding -- Well, withdraw that.

Did you ever put the $1000 into your brother's business?

A No, I never did.

Q You deposited it, I take it, until such time as you --

A Right.

Q -- used it?

A (Witness nodding head affirmatively.)

Q Is that correct?

A Yes.

Q So that, having borrowed the money, you put it into a bank deposit, or into a checking account, and sat there for approximately a month?

A Right.

Q And then, having received this brochure, which

enlightened you on Galaxy Foods, and having spoken with Mr. Kirsch, instead of using the money as you said you were going to use it, you gave it to Mr. Kirsch?

A Yes.

Q Now, sir, this money, was it borrowed from a lending institution?

A Yes, it was.

Q From a bank?

A No.

Q What kind of lending --

A From a finance company.

Q Finance.

Now, I think you said that after you came out of the bank, that is, the bank to which you had gone with Mr. Kirsch, that Mr. Kirsch crossed out some word or words on the application (handing); is that correct?

A Yes. He crossed out the --

Q And he changed it; is that correct?

A Yes.

Q And I take it by words having been crossed out, you mean the phrase, "$3,000," and there is now"$1,000," substituted for that, and there is also "F.M." which was substituted for the word "distributor"?

A Yes.

Q Is that correct?

A That's correct.

Q Okay. That is what was changed?

A Yes.

Q When was it changed? Where were you physically at the time that this change was made?

A We were in his car.

Q And was the car in motion, or was the car standing still?

A The car was standing still.

Q Now, I think you also said that at no time while you were in the bank did you ever complete an application form for any loan?

A That's true.

Q Now, when you were speaking with the gentleman at the bank -- By the way, do you recall his name?

A No, I don't.

Q Do you know what branch?

A No.

Q Well, at any rate, when you were speaking with this man from the bank, what did you tell him you wanted the loan for?

A I told him I wanted the loan to buy furniture.

Q Now, at the time that you made that statement to

the gentleman at the bank, sir, did you believe that statement to be false or true?

A I knew the statement was false.

Q And notwithstanding that, you did make it?

A I did.

Q Now, you say that you subsequently invested $2,000 more in Galaxy foods?

A Yes.

Q When was that additional investment made?

A I would say January or February.

Q Of what year?

A 1972.

Q Now, sir, it was exactly February the 4th, 1972. Does that refresh your recollection?

A It does.

Q That was the same day nn which you received the check from Galaxy Foods for $1250, true?

A I would say it is correct.

Q So that you hanled them one check, and received another?

A That's correct.

Q Where did you given them the $2,000 check?

A At the home office.

Q Was that at an Opportunity meeting?

A No.

Q Was it at any form of meeting?

A No.

Q When did you receive the $1250 check?

A I would say at a step-up meeting.

Q Well, sir, it seems, according to the records of the corporation, at any rate, and I think you have already acknowledged that both deeds were performed at the same time, that is, that you invested an additional $2,000, and you received a check simultaneously for $1250; is that incorrect?

A Just because the day is on the 10th doesn't mean that you actually received it on that day.

Q Well, sir, I asked you whether it was done simultaneously, and I thought you said, "Yes," but do you wish to change that answer?

A I wish to change it, that I did not receive the check on that date.

Q Okay. Fine. Do you recall on what day you did physically receive the check?

A I would say the immediate Sunday following that.

Q And who gave it to you?

A I would say a guest gave it to me.

Q By "guest," do we mean someone associated with Galaxy Foods, but who was speaking there at the meeting as a

guest, or do you mean a complete stranger?

A I mean a complete stranger that was asked to come up to the front of the room to pass out the check.

Q Do you know who that complete stranger was?

A I have no idea who it was.

Q Do you know whether he was in any way associated with Galaxy Foods?

A He was not associated with Galaxy Foods.

Q How many other checks were given out at that same time to other people, anyone?

A Sure.

Q And all by this guest?

Yes.

By the way, were you ever associated with the supermarket?

A With the supermarket?

Q With a supermarket, any supermarket?

A Yes. I have worked in supermarkets before.

Q Were you ever a principal of any supermarket?

A No.

Q Did you ever own stock in a supermarket?

A No.

Q Were you ever a partner in a supermarket?

A No.

Q Well, what supermarket or supermarkets were you associated with?

A I used to work an Associated Supermarket.

Q When?

A I would say -- I would say 1964, 1965.

Q All right. Now, sir, how about subsequent to your entry into the organization known as Galaxy Foods? Were you associated with any supermarket from that point up to the present?

A Never.

Q Never?

A Never.

Q How about your brother?

A Never.

Q Any member of your family?

MR. LERNER: Relevancy, your Honor.

A Never.

MR. LERNER: Wait until the Court rules on the objection.

MR. GOIDEL: I am sorry.

MR. LERNER: What difference does it make?

THE COURT: I'll overrule your objection on the ground of relevancy, but I think the witness has answered negatively as to all questions, as I recall.

Q Well, now, sir, tell us a little something about this quarrel concerning which the Executives of Galaxy Foods sought to eliminate your status with that corporation.

MR. LERNER: Objection. I don't think there is any testimony that there was a quarrel, quotes.

Q Was there a quarrel?

A They tried to terminate me.

Q Did they tell you why they decided to terminate you?

A They said they desired to terminate me because I was influencing people to think negatively.

Q But did they tell you what they meant by "influencing others to think negatively"?

A Those were the exact words that they used, and they gave instances. They said people had come to them saying that I had suggested that the Field Managers and Distributors take over the company.

Q Yes. And had you done that?

A To certain individuals I had.

Q Yes. And I take it that your activities with regard to the Association came to their attention; is that correct?

A What do you mean by me --

Q By your association with the Distributors Associ-

ation had come to the attention of the principals of Galaxy Foods; is that correct?

A I don't understand what you are saying.

Q Well, did your activities in connection with the Distributors' Association come to the attention of the principals of Galaxy Foods? Just yes or no.

A I would say yes, but at that time I was not only in a position, not holding any position in the Association.

Q Well, were you a member?

A Yes, I was a member.

Q And there was another organization formed at some point called the Council? Do you recall that?

A Yes.

Q Were you a member of the Council?

A Yes, I was.

Q And did you activities as a member of the Council come to the attention of the principals of Galaxy Foods?

A Yes. They knew who was on the Council.

Q Pardon?

A They knew who the Council consisted of.

Q And did they discuss with you your participation in the Council?

A No.

Q These negative remarks that you supposedly were

making to others, were they made by you as a member of the Council, or as a member of the Distributors' Association, or in some other capacity?

A Yes. Just as a Distributor in Galaxy.

Q And did they specifically tell you what the remarks were that you made that were considered to be of a negative nature?

A The remarks that I have already stated.

Q Well, now, sir, as late as November, 1973, -- I'm sorry -- November of 1972, you had received a commission check for the sale of franchises; is that correct?

A Yes.

Q Did your activities cease at that point?

A At November, '72? No.

Q Did you still try to sell franchises?

A Not actively.

Q In any way, inactively?

A Yes.

Q When is the last time that you can recall speaking to any individual for the purpose of inducing that individual to purchase a franchise?

A I can't remember. I would have to say the latter part of '72, or early part of '73.

Q Before or after you consulted with the representa-

tives of the Securities and Exchange Commission?

A At the time that I had -- that I contacted the Security Exchange Commission I wasn't talking to anyone about Galaxy.

Q By the way, sir, did any of the people whom you sponsored into the Galaxy Food Corporation borrow money for the purpose of making their investment?

A Yes, some of them did.

Q How many of them did?

A I would say as far as I know, one person did.

Q And how did you learn the fact that he was borrowing money?

A I didn't know. This particular person came into the organization through Field Manager.

Q You say to your organization?

A Yes.

Q What was your organization?

A Being that I am a Distributor, and I have Field Managers under me, we used the term organization.

Q I see.

Did you have an office?

A No, I didn't.

Q You operated out of your home?

A Yes.

Q And did these Field Managers report to you from time to time?

A No, they didn't, only by phone.

Q By phone?

A Yes.

Q But they did report to you?

A Yes.

Q And did you give them instructions?

A No, they received the same instructions I received.

Q Well, what was this communication had between you and them?

A The communication would be, let's suppose I had a Field Manager. They didn't have the same amount of experience that I did. If he had a problem or something, he would ask me for suggestions.

Q Can you give us a specific example of a suggestion which you made to someone who called you for the purpose of obtaining assistance?

A One of my Field Managers, a problem developed. It was a female. Her husband became very sick and she needed money for hospitalization, so she came to me and said, was it possible for her to get her money back from Galaxy. So I suggested that, you know, she go directly to the Corporation

and ask them.

Q Well, now, how about -- Did any of these people contact you with a view towards getting assistance in helping to make a sale of a franchise?

A Yes.

Q Can you name any specific individuals who contacted you to obtain information of that sort?

A I would say one of my Field Managers, R. S. Dodd.

THE COURT: D-o-d-d?

THE WITNESS: Right.

Q And would you tell us what Mr. Dodd asked you, and what your advice to him was?

MR. LERNER: Objection, your Honor; hearsay.

Q Well, tell us what you told Mr. Dodd.

A Prior to Mr. Dodd coming to me to ask me this information, I instructed all my Field Managers at this time, at this particular time, that I didn't think Galaxy would work and they should try to get their money back as best they could. So he asked me what should he do. I told him just buy it back options. As far as I was concerned they -- the only way you could get your money back was to try to sell it, and he was going into business for himself at the time, so this is what he did.

Q He sold his franchise on your advice to still a

third person?

A Yes.

Q And you gave this advice at a time when you believed that Galaxy Food could not live up to the promises which it had made?

A Right.

Q Tell me, sir, did you try to sell yours as well?

A No, I didn't.

Q You held on to yours?

A Yes.

Q Matter of fact, you still have them?

A For what it is worth, yes.

Q For whatever it is worth, you still have it; isn't that true?

A Yes.

Q Now, tell us the name of this individual that you know borrowed money.

A That no borrowed money?

Q That you know borrowed money.

A Fern Lutkins.

Q Mr. Lutkins?

A It is a she, Fern Lutkins.

Q Fern Lutkins.

THE COURT: L-u-t-k-i-n-s?

THE WITNESS: Yes.

Q Do you know where Fern borrowed that money?

A I do not know.

Q Did you have any conversations with Fern at the time that she borrowed the money, or immediately prior to that time?

A No.

Q Well, how did you ever learn that she borrowed the money?

A My Field Manager explained to me that she did.

Q What did your Field Manager explain to you?

MR. LERNER: Same objection, your Honor: calls for a hearsay answer.

MR. GOIDEL: This is part of the business operation itself, your HOnor.

MR. LERNER: What does that have to do with it?

THE COURT: I will sustain the objection.

MR. GOIDEL: All right, sir.

Q When you learned that Fern borrowed the money, or was borrowing -- Withdraw that.

Did you learn that Fern was borrowing the money, or was going to borrow the money?

A I learned that she was going to borrow the money.

Q And did you tell your Field Manager to stop her?

A No.

Q Did you try to stop her?

A I didn't try to stop her. If I would have tried to stop one of my Field Managers, I would be interfering with his business operations.

Q Now, let me ask you this. In the hierarchy, that is, the structure of this corporation, were you not aware of the fact that you were the immediate supervisor of this Field Manager?

A Yes, in one sense.

Q Now, let me ask you this: Any sale made by one of your Field Managers inured to your benefits; isn't that correct? In other words, you would get a commission, in addition to the commission they would get in connection with that particular sale?

A Yes, that's true.

Q Now, when Fern borrowed the money, and borrowed, or rather, borrowed the money and purchased that franchise, you did get a commission?

A I did.

Q Did you at any time go to Fern and say, "Hey, Fern, here's your money back"?

A No, I didn't.

Q When was that that you learned that Fern was

going to borrow?

A I can't remember the dates.

Q Was that in February, or as late as November?

A It's too long ago. I really can't remember the date.

Q Now, sir, did you speak at any of the Step-Up Meetings?

A Never.

Q At any of the Training Sessions?

A If I spoke, you know, like I said before, it was in a jam session where they asked suggestions from the floor, or something like that.

Q Well, by "jam session," sir, I think once before you used that expression, or a similar expression in connection with the Training Meeting, where you would sit around, and you would, you know, speak off-the-cuff. Now, did you speak at those meetings?

A Yes, I spoke off-the-cuff.

Q In an impromptu fashion?

A Yes.

Q And Mr. Kirsch spoke in an impromptu fashion at those meetings?

A Yes. Anyone could offer suggestions.

Q Now, sir, let me ask you a question: Andplease

think carefully. Did Mr. Kirsch ever tell you anything about Galaxy Foods which you learned later was false?

A I would say yes.

Q Tell me what.

A When I first -- When I first met Mr. Kirsch, I was under the impression that he was an Executive, and that he did have experience, some kind of experience, in the food business himself, but I later learned that he didn't have any experience in the food business.

Q Anything else that he said to you about this business that you later learned was false?

A I would say that's all.

Q Now, sir, you said that in the beginning you could visit the warehouse after it had been acquired?

A Yes.

Q And that subsequently, that is, after the food was being purchased, you would have to make an appointment?

A Yes.

Q Did anyone, sir, ever tell you that the reason for making the appointment after that was for security reasons, so that there was no pilferage of food and merchandise that was stored in the warehouse?

A That's understandable, but as an investor in the company, I think we should have the right any time to take a

tour of the warehouse.

Q I understand what you felt, that you had a right to, or would like to have had, but wasn't it explained to you that the reason for it was --

A No.

Q -- was to prevent pilferage and individuals passing up and down through the stacks?

A I understand it, but it was never explained to us like that.

Q All right. Fine. Now, let me ask you this question: Were you ever denied entry to the warehouse?

A Once I went to the warehouse, and this was during a Step-Up Meeting, and I had spoken to --

Q By whom?

A By Mr. Katz.

Q Okay. What did Mr. Katz say to you?

A He went into the same negative attitude thing, that he asked me to appear down at the home office a couple of days later, and said the Executive Board wanted to talk to me.

Q Had you gone there with the purpose of visiting the warehouse and inspecting it?

A At this time certain parts of the warehouse was off limits, and I wanted to see exactly what was happening in the warehouse. This is why I went.

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Q What parts of the warehouse were off limits?

A The parts where the food was at.

Q Any other parts off limits?

A No, except the Executive Offices.

Q Now, prior to that time, had you gone to the warehouse to see what was taking place there?

A I had.

Q Had you ever seen Mr. Kirsch working?

A I have.

Q Would you tell us what you observed and what you observed Mr. Kirsch doing on the various visits that you made to the warehouse?

A I would say the only thing I have ever seen him doing was paper work.

Q What type of paper work, do you know?

A I don't know.

Q Did you ever see whether he was working in connection with a catalogue or orders for food, or anything specifically?

A It was his desk, his office, and I don't know what he was doing.

Q All right. I will ask you another question: On these occasions -- By the way, how many such occasions were there that you went to the warehouse?

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A I would say -- I would say about five occasions.

Q And was Mr. Kirsch there on each of these five occasions?

A No, he was not there on every occasion.

Q All right. On how many of the five occasions was he there?

A I would say three of the occasions he was there.

Q And on the three occasions that you observed Mr. Kirsch there, was he working?

A He was working.

Q And did you have any discussions with him as to what he was doing?

A No. Mr. Kirsch and I, our relationship became very -- became very bad at this time.

Q What time was this, sir?

A I would say immediately after I elevated to become a Distributor.

Q That would be February of 1972?

A Right.

Q Had you and Mr. Kirsch had a disagreement or a quarrel?

A Not something verbal, but it was just something that to me was a principle.

Q What was it?

Well, withdraw that.

Did Mr. Kirsch ever yell at you?

A No, he never yelled at me.

Q Did he ever ignore you?

A I will tell you exactly what happened.

Q Please do.

A I had a guest at a meeting one night, and I wasn't even present, and my guest, you know, he was observing the company more. I knew he had the money. I knew he wanted to come in, but at this time I was having the money to elevate, and Mr. Kirsch didn't know this. So Mr. Kirsch called me at home from the Opportunity Meeting to ask me what was happening, why is this guy, you know, down here, you know, in other words.

Q He was down there without you?

A Yes. Why is he down there, and Mr. Kirsch must have approached this -- my guest, and asked me --

Q No, no, don't tell me what he must have done. Just tell me what he said to you.

A The fact that he did approach my guest.

Q Just tell me what he said to you, what you said to him.

A He said, "Your guest is down here with the money, why aren't you here?" And I told him I couldn't make it that night, but I would be there, and he is my guest, youknow,

and I will take care of him.

Q When was this conversation?

A I would say this was, I would say, February of 1973.

(Discussion off the record.)

THE COURT: All right. In that case, then, we will suspend until 10:00 A.M. tomorrow.

(Thereupon, at 5:30 P.M. the case was adjourned.)

* * *

# I N D E X


| Witnesses | Direct | Cross | ReDir | ReCr | V. Dire |
|---|---|---|---|---|---|
| Arthur Lieberman | | | 774 | | 789 |
| | | | | | 795 |
| | | | | | 812 |
| | | | | | 841 |
| | | | | 847 | |
| | | | 872 | | |
| Howard Ray Beck | 881 | | | | |

**Exhibits**

| Government's | | For Id. | In Evid. |
|---|---|---|---|
| 14 & 14A | Articles | 776 | 822 |
| 15 | Advertisement | 777 | 824 |
| 16 | Advertisement | 778 | 827 |
| 17 | Advertisement | 781 | 830 |
| 18 | 6-pg Brochure | 785 | |
| 19 | 2-pg Document | 791 | |
| 20 | 4-pg Document | 793 | 797 |
| 21 | Pink Sheet | 803 | 805 |
| 22 | Memo - 12/18/72 | 480 | 841 |
| 23 | Memo - 1/23/73 | 843 | 844 |
| 24 | Document | | 873 |
| 25 | Group of Letters | | 879 |


(continued on next page.)

I N D E X (continued)

Exhibits

| Governments (continued) | | For Id. | In Evid. |
|---|---|---|---|
| 26 | Flyer | | 883 |
| 27 | Application Form for Galaxy | | 903 |
| **Defendant's** | | | |
| O | Document | | 852 |
| P | Document | | 867 |

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

SECURITIES EXCHANGE COMMISSION, :

Plaintiff, :

-against- : 73-C-1742

GALAXY FOODS, et al., :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 8, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

ALLAN LERNER, ESQ.
HARRY GARMANSKY, ESQ.
REGINA MYSLIWIEC, ESQ.
JULIA WILLIAMS, ESQ.

ALVIN GOIDEL, ESQ.
Attorney for Defendants Arthur Sheback and Irwin Kirschenblatt

GEORGE PADILLA
Pro Se

MR. LERNER: Good morning, your Honor.

THE COURT: Good morning.

THE CLERK: All parties are present. All right. Case on trial, Securities Exchange Commission versus Galaxy Foods, Incorporated, et al. All parties are present.

H O W A R D R A Y B E C K , having been previously duly sworn by the Clerk of the Court, resumed the witness stand and testified further as follows:

CROSS-EXAMINATION

BY MR. GOIDEL: (Cont.)

Q Sir, yesterday on direct examination you were asked the following questions. It appears at page 927 of your testimony.

"Question: Were -- was there any applauding or cheering when the checks were being handed out?

"Answer: Yes, there was.

"Question: From where did it emanate?

"Answer: From the back of the room.

"Question: From who?

"Answer: From the executives of the company.

"Question: Did distributors and field managers also cheer and applaud?

"Answer: Yes. We were taught at the sessions to cheer and clap."

Do you recall giving that testimony in answer to those questions?

A Yes.

Q Sir, who taught you how to clap?

A No one taught me how to clap. We were instructed to clap.

Q Who instructed you to clap?

A The instructors at the training sessions, which would be Bruce Katz, Arthur Lieberman, Kenneth Rosenthal, Charlie Horowitz.

THE COURT: Who was the last?

THE WITNESS: Charlie Horowitz.

THE COURT: Horowitz.

Q Sir, would you describe this session of cheering and clapping for us? Try to picture it in words.

Did people stand on chairs? Did they run up and down aisles? Did they hold up signs that said "Applaud"? Describe it for us.

MR. LERNER: Excuse me, Mr. Goidel. Are you referring to the training sessions or --

MR. GOIDEL: No. I am talking about those sessions at which they were educated to clap.

MR. LERNER: The training sessions.

Q Is that where this clapping took place or was

it at opportunity meetings, sir?

MR. LERNER: Your Honor, objection. The question is confusing.

THE COURT: Maybe it is.

MR. GOIDEL: I'll rephrase it, your Honor.

MR. LERNER: He was taught at training sessions.

THE COURT: I understand.

MR. LERNER: He did it at opportunity and Sunday step-up meetings.

BY MR. GOIDEL:

Q I am speaking now at the meetings at which you actually did do the clapping and the cheering or the applauding or whatever did go on. Would you describe the atmosphere to me as relates to cheering and applauding?

Did people run up and down aisles, stand on chairs, jump u p and down, respond to signs? Tell me what they did.

A When -- I don't think this is working.

THE COURT: Oh, no, it is not. Please put the microphone on. Thank you.

A (Continuing.) When $60,000 was written on the blackboard, the executives of the company and the field managers and distributors clapped and cheered. Not only did we do it at this particular time, if anything exciting happened

throughout the presentation, we did it. Like --

Q Please sit back so the sound can be picked up.

A Let's say a guest really got enthused into what was happening and said something like "Stop it, I can't take no more," you know, we heard people say "Eat your heart out, how would you like to make that amount of money."

Eventually, as Galaxy really got big, at the opportunity meetings people would be turning in checks, walking up and down the aisles, turning in checks.

It got so confused that many guests started complaining about it.

Q When did this confusion set in? Can you fix it in terms of time?

A I would say, mid-1972.

Q All right. Now again I will ask you specific questions.

Did people run up and down the aisles?

A No. Only to turn in checks.

Q In other words, they would walk up, turn in the check, turn around, walk back?

A Yes.

Q Did people stand on chairs and jump up and down on the chairs?

A- No.

Q DId people sit there stamping their feet on the ground?

A No. Just clapping, cheering and sometimes holler certain phrases.

Q Now, these meetings were conducted where? Let's say in -- from mid-1972 forward? Where were they conducted?

A At various hotels and motels throughout New York City.

Q I take it that they rented a room of sort?

A Yes.

Q It was not a small room? It probably was one of the ballrooms or one of the convention rooms or meeting rooms; is that correct? It was not a bedroom?

A I wouldn't say it was a ballroom. Usually it was a small meeting room or convention room, like you said.

Q All right. Now, I think you said that the clapping originated in the back of the room?

A Yes.

Q Well, where were you seated usually during these meetings?

A If I had a guest, I would be sitting beside my guest. If not, I would be sitting in the rear of the room.

Q I see.

Did you originate the clapping from the rear of

the room when you sat in the rear of the room?

A No.

Q Others did?

A Yes.

Q LEt me ask you this. Did the clapping ever begin in the front and work its way backward?

A No.

Q How about when the magic number 60 was put on the blackboard, didn't all those who had been educated to start to clap begin to clap spontaneously or did they wait for the noise to originate in the back of the room?

A I would say they did both.

Q They did both?

A They knew they were supposed to clap. The guys in the back knew they were supposed to clap also.

Q Let me ask you this, sir. When you were seated in the back of the room and you saw that magic number 60 or 60,000 put up, did you wait for a cue or was that your cue?

A That was your cue.

(Continued on next page.)

Notes

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CROSS-EXAMINATION

BY MR. GOIDEL: (Cont.)

Q And you started to clear then?

A Yes.

Q Now, in all, sir, can you give us a guesstimate or a fair estimate of how many people, irrespective of whether you consumated a sale or not, of how many people you brought to these Opportunity Meetings?

A I would say, at least once a week. One person a week.

Q So that, having begun with the company somewhere in September of 1971 and not having terminated your relationship with it until, I think you said around November of 1972, or ever later --

MR. LERNER: Objection.

He did not say that.

Q All right.

When did you terminate your relationship with the company?

A I would say, October or November of '72.

Q Having commenced with the company in September '71, having concluded your relationship somewhere in the latter part of '72, would it be fair to say that at least once a week you had brought a guest to one of those

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Opportunity Meetings?

A I would say yes.

Q And of those 50 or 60 people then, assuming that you brought just one at a time, you consumated six sales, is that correct?

A I don't think you understand.

It may show that I received six checks but it doesn't mean that I personally brought in six people.

Q Well, six people who were either sponsored by you or by field managers working beneath you?

A If you say trat, I would say yes.

Q Okay. Fine.

Now, were there occasions when you brought more than one person?

A There were occasions.

Q If a man had a wife and you brought him to a meeting, did you endeavor to enlist the services of his wife as well to come with him and possibly talk him into making the purchase?

A It was up to him.

Q Okay.

Were there occasions when you brought more than two people?

A There were occasions when -- more than two

guests met me there.

Q What would be the maximum number of people whom you can specifically recall having brought to a meeting at any one moment?

A I would say two.

Q Two.

Now, you also testified, sir, to the effect that it was your understanding that the only way that the executives could earn money would be through the sale of the franchises, the 'wholesaling' is the word you used.

Do you recall it?

A Yes.

Q Did there come a time that you first became apprised of the fact that the corporation was indeed trying to establish a marketing or retail end of the business?

A Yes. There was a time.

Q When did you first learn of that?

A As far as I am concerned, the first time I actually heard this was -- I would say, I would say early spring, 1972.

Q By early spring, March, April?

A I would say May.

Q May.

But now you did testify originally that when

this business was introduced to you, that it was introduced to you as a home food delivery service?

A Right.

Q Isn't that correct?

A Yes.

Q So that back in September of 1971, you knew the purpose or the ultimate purpose of this business; isn't that correct?

A Yes.

Q Now, are you telling us, sir, so that we can be sure of what you are saying, -- are you saying that between that period, September of 1971 and April or May of 1972, there were no discussions of any nature, type or description concerning the so-called retail end of the business?

A I would say the early part of 1972, in these training sessions, we were actually taught certain areas of the retail operation.

Q And who taught you those certain areas of the retail operation?

A The different vice presidents of the company, including Don Kirsch.

Q Fine.

Now, when is the first time that you actually learned that the corporation was purchasing materials in

connection with its prospective retail operation?

A I would say, the same time period, early spring, 1972, because at this time they actually did a limited pilot program.

They stopped it.

Q Now, did -- withdraw that.

Did Galaxy Foods ever invite the distributors to meetings other than to training sessions?

A Yes.

Q And did they do that in early 1972?

A Yes, they did.

Q And how frequently would the distributors meet for a purpose other than to participate in a training session?

A I would say, in early part of '72 it was once a month, but you know, later part of '72, start having them twice a month.

Q Okay.

Now, what was discussed at these meetings?

In other words, they weren't Opportunity Meetings and they weren't training sessions and they weren't Step-up Sessions. They were just meetings of distributors and what was discussed at them?

A They weren't meetings of distributors. They were like information meetings, called business meetings by

the executives.

Q At those information meetings, were you apprised of the efforts being made by Galaxy Foods in connection with the retailing of food?

A Was I what?

MR. GOIDEL: Read back the question, please.

(Record read.)

THE WITNESS: Yes.

MR. GOIDEL: No further questions of this witness at this time, your Honor.

THE COURT: Mr. Padilla?

MR. PADILLA: Yes, your Honor, I have a couple of questions.

CROSS-EXAMINATION

BY MR. PADILLA:

Q Mr. Beck, you attended a business management school in Galaxy, did you?

A Yes.

Q Who was -- your instructor, the chief instructor of the class at that time?

A At that time I would have to say -- they had various instructors.

Q But did they have someone who was in charge of the class? In other words, the instructor, the principal

instructor?

A Principal instructor? Let's see. I would say it was Bruce Katz.

Q Bruce Katz.

What was your number in Galaxy Foods, your distributor's number?

A I've heard several versions. 22 or 24. I assumed that it's 24.

THE COURT: When you say -- you mean a number assigned to him?

MR. PADILLA: In other words, well -

THE COURT: Is that what you mean? Not the number who attended?

MR. PADILLA: No. His number. In other words, as you came in, the next number.

THE COURT: I understand. I was simply confused as --

MR. PADILLA: His distributor number, what number was he coming into Galaxy.

THE COURT: All right.

That was the order in which they came in?

MR. PADILLA: That is correct.

(continued next page.)

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CROSS-EXAMINATION

BY MR. PADILLA:

Q During business presentations, business meetings, you testified there were different speakers. There was one guest speaker, am I correct?

A Right.

Q Who were the speakers that normally did this guest speakers job or who would -- who usually did the guest spot at the presentation?

A I would say, Bruce Katz did. Arty Lee did it sometimes. Steven Roth did it. And depending on where you were located, one of the graduates from the advanced training session could actually do the guest spot.

Q Okay. Did you ever hear during the question period a question come from the floor and this form or similar form to this? "I don't have money and I want to join Galaxy Foods. How do I go about getting the money"?

A Yes, I have heard the question.

Q What was the answer generally given by one of the guest speakers to that question?

A The general answer is, "There are ways, speak to us later."

Q Was there any-- ever any of this guest's, prospective distributors, who inquired further into that

question and said, "Yes, but you know, how do I get it, I want to know"? Would the discussion continue?

A Yes. The discussion would continue.

Q How would guest speakers follow that up?

A They would approach the guest after the meeting and talk to them.

Q Was there ever any time when you actually heard a guest speaker answer that question, say you know what you should do about getting money from the floor in front of everybody?

A I think on one occasion I have heard some of the guest speakers say that there are different ways of getting the money, such as borrowing against your property, your house, against your insurance policies, what not.

Q Did you ever again hear anyone say, ask to get a loan? You -- did you ever hear a guest speaker answer by saying, "You could get a loan?"

A Yes.

Q And again, did you hear -- did you ever hear any guest speaker say, "If -- if you get a loan," -- strike that for a minute. Did you ever hear the prospective distributor ask if he gets a loan, whether he should put down that he wanted the money for Galaxy Foods? Or not? Did you ever hear that?

A I have heard it but not from a guest speaker saying this in front --

Q Not a guest speaker. A prospective distributor asking the guest speaker if he gets a loan, in other words, in the form like this, "If I get a loan, should I put down that I want this money for Galaxy Foods"?

A Yes. But not while the guest speaker was at the front of the room.

Q You never heard it?

A No. You know, I have been near a guest speaker and heard him, a guest and a guest speaker carry on this conversation.

Q But you never heard it in front of the room?

A No.

Q Tell me, Mr. Beck, why did you join Galaxy Foods?

MR. GOIDEL. Objection.

MR. PADILLA: What is the reason for the objection?

MR. GOIDEL: We are not concerned with the operation of mind.

THE COURT. I think in this case, we are. I will overrule this objection.

Q Why did you join Galaxy Foods, Mr. Beck?

A I joined Galaxy Foods because I believed in the idea and I believed that it would work.

Q Did you join Galaxy Foods because you felt it was a vehicle by which you could make money in wholesaling or because you -- or because you felt that it was a good idea as a retail operation in delivering food to the consumer?

A I felt that it was a good idea for retailing foods to the consumer.

Q Then again, why did you do any wholesale then?

A Because that was the only way to make money until the retail started.

Q Was -- were there times when you were told that in order to get the retail started, we have to work the wholesale?

A Yes, we were always told that.

Q Was -- Mr. Beck, was I a member of the distributor's association?

A Yes, you were.

Q Was I an active member of the distributor's association?

A I would say yes.

Q During the business management training, in other words, during school, how were you instructed to go

about when -- with someone who didn't have the money to join Galaxy Foods or prospective distributor and wanted to join? What were you instructed to do?

A We were instructed to try to help your guest get the money any way possible.

Q What was -- what was the emphasis put on, as far as loans went? What should you -- should you as a distributor do for that prospective distributor?

A As much as possib?

Q Were you instructed -- were you ever instructed -- were you ever instructed that if they went to the bank that you should go to the bank with them?

A Yes.

Q Were you ever instructed to tell them that if they -- on their application not to put that they want the money for Galaxy Foods?

A Yes.

Q What were you instructed to tell them to put on the application?

A Usually for furniture or for home improvement.

Q Who --

THE COURT: What was the last?

A Home improvement.

THE COURT: Home improvement?

A Yes.

Q Who were the instructors at the training schools who handled this aspect of the training, in other words, this part of it, the wholesale end of the training?

A Ususally it was Bruce Katz or Steven Roth.

MR. PADILLA: I have no further questions.

REDIRECT EXAMINATION

BY MR. LERNER:

Q In connection with the training session, Mr. Beck, which Mr. Padilla just -- which you and Mr. Padillo just discussed, was Mr. Kirsch present?

A Yes.

Q At the -- let me begin the question. Was he present at the training session when discussion of how to take out bank loans were made?

A Yes, he was present.

Q Now, during cross-examination by Mr. Goidel yesterday, extensive questioning was had on the description of your travelling through the Queens Midtown Tunnel and the passing of a flier to your car. And I believe yesterday you testified that you were in a panel truck?

A Yes.

Q Is that correct?

A Yes.

Q Your position vis-a-vis the position of the car which handed you the circular was -- well, I'll put it this way. You were sitting -- I think your testimony was that you were sitting higher than the car, is that correct?

A Yes.

Continued on next page.

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1 Beck - redirect

REDIRECT EXAMINATION

BY MR. LERNER (Cont'd):

Q How on -- and you also testified that it was Mr. Kirsch that was driving that other car; is that correct?

A Yes.

Q How were you able to see Mr. Kirsch?

MR. GOIDEL: Objection. How he was able to do anything, your Honor.

The facts will speak for themselves. He has already stated that he did see him.

MR. LERNER: Mr. Goidel has put into question the witness's credibility.

MR. GOIDEL: The facts --

MR. LERNER: Let me finish, please.

MR. GOIDEL: Fine.

MR. LERNER: He has put into question the credibility --

THE COURT: Could we get that testimony yesterday? Maybe that would be best. Perhaps that hasn't been done.

MR. GOIDEL: It's on page 952, your Honor. It starts at 952.

THE COURT: It would be much more helpful to the Court if you could deal with the specific questions

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and answers on cross.

MR. LERNER: On Page 955, your Honor. I will read the questions. Starting on page --

THE COURT: In fact 958, isn't that the particular question in the middle there, about line 10 or 11?

MR. LERNER: All right! I will read that question.

BY MR. LERNER:

Q Page 956, line 11:

"Question: Now, sitting in that position, you turned to your left and looked, and you looked across your brother through the window, the open window of your car, through the open window of the other vehicle past the two people sitting to the right of the driver and observed Mr. Kirsch?

"Answer: Yes."

A Yes.

Q Now, I think it is relevant on page 955, the question on line 13:

"Question: How much lower would you say the roof of the Rambler was from the roof of your van?

"Answer: I have no idea.

"Question: Well, now were you seated above the roof of the Rambler, above the roof?

"Answer: No.

"Question: Was any part of your body higher than the roof of the Rambler?

"Answer: Yes.

"Question: What part of your body was above the roof of the Rambler?

"Answer: I would say the truth that we were in."

How then could you observe Mr. Kirsch driving the car?

MR. GOIDEL: The witness has already stated that he observed Mr. Kirsch. How he does something is improperly framed.

He said that he did. I tried to elicit facts that perhaps he could not.

The trier of the facts will make that decision. To ask him to elbaroate upon how he might have done something is improper.

MR. LERNER: I don't think it is improper testimony. It is rehabilitating testimony.

MR. GOIDEL: It is not.

MR. LERNER: For goodness sake, would you let me finish?

MR. GOIDEL: I will let you finish.

MR. LERNER: Mr. Goidel has put into question

the witness's ability to observe Mr. Kirsch in the other car.

It is conceivable that the witness leaned down or stood up or did something at the time he observed Mr. Kirsch.

That is precisely the type of answer I am trying to elicit from the witness.

THE COURT: I suppose what Mr. Goldel is objecting to is your shorthand way of doing it. If you want to ask this witness whether he leaned forward and looked and he says he turned to his left and looked across his brother through the window so that he must have advanced his gaze, so what? So he could look through the window and he says he saw Mr. Kirsch.

That's a fact that he has testified to. You say there are other facts.

MR. LERNER: I don't know. That's what I am trying to elicit from the witness.

I think that point has been put into question. I am trying to determine whether or not the witness did anything else to see Mr. Kirsch.

Maybe I can get at it this way.

BY MR. LERNER:

Q Mr. Beck, by sitting normally in your car,

with your back to the back of the seat, were you able to observe Mr. Kirsch driving the car?

A I would say in one instance I was.

Q What instance was that?

A This was when we first spotted the car.

Q Could you describe the circumstances?

A In this circumstance, Mr. Kirsch's car was in the far left-hand side of the lane, my brother and I and our truck were in the far right-hand side of the lane.

Q And you were able to see Mr. Kirsch?

A I was.

Q Let me ask you this: You testified that you subsequently called Mr. Kirsch and met with him.

At any time after the incident that took place in Queens Midtown Tunnel, did Mr. Kirsch confirm to you that he was in fact the person driving the car?

MR. GOIDEL: Objection. He is consistently leading his witness into an answer.

I move to strike the question and answer.

Well, no answer has been given. I move to strike the question.

THE COURT: Well, I will sustain the question as to the form. I will permit you to inquire of this witness whether there was any discussion between him

and Kirsch about this tunnel incident. We will hear what he has to say about it if there was or wasnot.

BY MR. LERNER:

Q After the incident that took place in the Midtown Tunnel, Mr. Beck, did you have a discussion with Mr. Kirsch concerning that incident?

A I did.

Q Please tell the Court what you discussed with him, what he said to you and when the discussion took place?

A When I met Mr. Kirsch, I realized he was the first person driving the car and I asked him and he said, "Yes, it was me."

Q When did that discussion take place?

A I would say when I first met Mr. Kirsch, after the Opportunity Meeting.

Q I believe yesterday you testified that Mr. Kirsch spoke at Opportunity Meetings; is that correct?

A Yes.

Q And referring to page 956, the question was asked, on line 21:

"How often did he speak at them?"

And the answer given, "I would say at least once a month."

Now, there is no -- strike that.

How long did Mr. Kirsch speak for once a month, for your entire association with Galaxy?

A No, I would say up until he actuall became an executive of the company.

Q Do you recall when he became an executive of the company?

A I would say the early part of 1972.

Q What position did he hold?

A Vice-president in charge of marketing.

Q Now, at the end of your testimony yesterday, Mr. Goidel and you were discussing aproblem which had arisen in connection with a guest of yours going down to a meeting and your not appearing at the meeting at that time, and Mr. Kirsch calling you in and questioning you or inquiring of you why you were not there.

Do you recall that exchange between yourself and Mr. Goidel?

A Yes.

Q And you were asked, when was this conversation, on 983 of the transcript, and your answer was, "I would say this was I would say February of 1972."

Is that statement accurate?

A Yes.

Q And --

A 1972.

Q 1972?

A Yes.

MR. LERNER: I have no further questions.

Excuse me, I have one more question, your Honor.

I'm sorry, that's all I have.

RECROSS-EXAMINATION

BY MR. GOIDEL:

Q For how long a period of time were the two cars parallel to each other?

A I would say for up to four minutes.

Q Throughout the period of time that you were in the tunnel?

A We were not in the tunnel.

Q Where were you?

THE COURT: Mr. Goidel, I think there has to come a time when even good things end.

This witness testified that Mr. Kirsch at the later time --

MR. GOIDEL: I understand what he said.

THE COURT: Admitted he was in the car. What are we accomplishing here?

MR. GOIDEL: Anything else, certainly the credibility of this witness.

THE COURT: I understand that, but Mr. Kirsch acknowledged that he was in the car, according to this witness.

Now --

MR. GOIDEL: I will ask one or two other questions, your Honor.

Q In preparation for this morning, sir, did you have discussions with the attorneys from the Securities and Exchange Commission?

A No, sir.

Q You had no discussion with them?

A None whatsoever. In fact, I got here kind of late. You saw me when I got here.

Q How about yesterday, when you left the Courthouse?

A I would say no.

Q Where did you go from here?

A You dropped us with them to the building where they work at.

Q In other words, you went to 26 Federal Plaza, I think that is the address?

A When you let us out of the car, they went to the building and I went to the subway.

Q I see. You went to Manhattan to go to the

subway?

A Yes.

REDIRECT EXAMINATION

BY MR. LERNER:

Q How did you get to Manhattan?

A I rode in Mr. Goidel's car.

MR. LERNER: Thank you.

THE COURT: All right, Mr. Beck, I guess you are finished.

MR. PADILLA: I have no more questions.

THE COURT: You are excused.

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sNotes

PAUL JOHN DECEGLIE, a witness, having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. GARMANSKY:

Q Would you state your name for the record?

A Paul John Deceglie.

Q Your address?

A 116 Davrack Drive, Lake Hiawatha, New Jersey.

Q Would you give us a brief description of your educational background?

A I have a Masters Degree in Electrical Engineering.

Q What is your present employment today?

A I work for Bell Laboratories in New Jersey.

Q What is your function there?

A I am a member of the technical staff.

Q Did you ever hear of a company called Galaxy Foods, Incorporated?

A Yes.

Q When for the first time?

A In the fall of 1971.

Q Where were you working at that time?

A I was working at Bell Laboratories.

Q Where did you reside when you heard of Galaxy

in the fall of 1971?

A My residence was on Main Street in Mendham, New Jersey.

Q When did you move to Mendham, New Jersey?

A I moved in the end of May, the beginning of June, 1971.

Q When you moved to Mendham, New Jersey, did you intend to make New Jersey your state permanent residence?

A Yes.

Q Did you do anything, Mr. Deceglie, in order to reflect this fact that you intended to make New Jersey your state residence?

A Yes, I transferred the registration of my automobile to New Jersey and acquired a New Jersey Drivers License.

Q Please tell us your reasons for moving to New Jersey?

MR. GOIDEL: Objection.

THE COURT: I think that is immaterial.

MR. GARMANSKY: It goes to the fact that he intended to make --

THE COURT: He said so and he said what he did. It is obvious that he is employed there.

Q When did you move to Lake Hiawatha, New Jersey?

A January of 1972.

MR. GARMANSKY: At this time I would like to mark as plaintiff's exhibit 28, a wage and tax statement for the year of 1971 for Mr. Deceglie showing his address in West Main Street, Mendham, New Jersey.

THE COURT: Is it a W-2 form.

THE CLERK: Yes.

MR. GARMANSKY: Your Honor, I will make the entire exhibit, also attached to it, is a Federal Tax Return for Mr. Deceglie for 1971.

THE COURT: Have you obtained his consent to have that made public.

MR. GARMANSKY: Yes, we have, your Honor.

Also part of exhibit 28 is New York State Tax Return for 1971 and Non-Resident return of 1971.

THE COURT: Are you going to make that a different number.

MR. GARMANSKY: No, we will make that all part of plaintiff's exhibit.

Also enclosed with that is an explanation prorating procedure which appears to have the signature of Mr. Paul Deceglie and also a claim for resident claim credit for the State of New Jersey which also appears to have the signature of Paul Deceglie.

Please make all of this part of plaintiff's exhibit 28.

THE CLERK: Plaintiff's exhibit number 28 so marked for identification.

(So marked.)

BY MR. GARMANSKY:

Q I would like to show you what has been marked as exhibit 28 --

MR. GOIDEL: We will stipulate that those are the documents described by Mr. Garmansky and we have no objection to having them offered in evidence.

MR. GARMANSKY: I move these documents, plaintiff's exhibit 28 in evidence.

THE CLERK: So marked in evidence.

(So marked.)

MR. GOIDEL: May I see them, please.

MR. GARMANSKY: Sure.

BY MR. GARMANSKY:

Q Would you please explain to the Court what were the circumstances of how you heard about Galaxy in the fall of 1971?

A My first exposure to Galaxy was through my fiancee's parents. Their neighbor was associated with Galaxy Foods and in order to introduce the company to other people

he had called an informal meeting at the home of my future in-laws.

There were about 20 or 30 people there, including myself.

Q When did this take place?

A Sometime in the fall of 1971.

Q Do you remember the month?

A No.

Q Who was this individual from Galaxy Foods?

A Frans Quack.

Q Did Mr. Quack give this presentation?

A Yes.

Q Did he introduce himself?

A Yes.

Q How did Mr. Quack introduce himself?

MR. GOIDEL: I object as to any conversation or discussion between Mr. Quack and any other third parties.

Mr. Quack is not a party defendant in this proceeding.

THE COURT: I will overrule your objection in this case on the basis that what Mr. Quack said will not be received as proof of the truth of statements made, but rather as to the state of mine of this witness

as a result of hearing what if anything he did explain anything he may have done.

So you may go ahead and the witness may relate, and I think generally, would suffice here, what statements he may have heard at that meeting which prompted him to do something.

The Court's interest is in what if anything this man did.

BY MR. GARMANSKY:

Q The question, Mr. Deceglie, is how did Mr. Quack introduce himself?

A He stated his name, said that he was associated with the company and that the company was looking for investors and it was a great opportunity for some people to make some money.

Q Did Mr. Quack tell you he had a position with the company?

A - I don't recall that he did.

Q Did you subsequently find out that Mr. Quack did hold a position in Galaxy?

MR. GOIDEL: Objection.

Your Honor said you were introducing this to show the operation of his mind.

THE COURT: At that time.

MR. GARMANSKY: The question is did you subsequently find out.

THE COURT: Well, can't we let that wait for a moment?

I am more interested in what this man did. He was at this meeting. This man Quack introduced himself. Did you do something either at that meeting or as a result of the meeting.

THE WITNESS: Not right away. I did not commit myself at that time.

It aroused enough interest in me that I attended subsequent meetings.

THE COURT: When was the first subsequent meetin g.

THE WITNESS: I believe it was several weeks later and the meeting was held at the Golden Gate Motor Inn in Brooklyn.

(Continued on next page.)

JB next

THE COURT: How was the news of that meeting conveyed to you? Did you receive some kind of circular or what?

THE WITNESS: No. These meetings were held regularly every week. And Mr. Quack said, I believe it was every Tuesday or Thursday night, something to that effect. We had -- they had a meeting at the -- this hotel and we could come any week that we --

THE COURT: This was a meeting where?

THE WITNESS: At the Golden Gate Motor Inn in Brooklyn.

THE COURT: All right, go ahead, Mr. Garmansky.

MR. GARMANSKY: Your Honor, I have to take my witness back to that first meeting with Mr. Quack. I am sorry.

THE COURT: Why?

MR. GARMANSKY: I have some other questions I want to bring out.

THE COURT: All right. Let me hear them. We will see.

MR. GARMANSKY: O.K.

Q Mr. DeSiglia, was anything mentioned at this meeting concerning that Galaxy was only limited to New York residents?

A Not that I can recall.

Q At this meeting was anything mentioned concerning how a person could earn money with Galaxy?

A Yes. Very definitely. They mentioned some figures how one could make money with Galaxy.

Q Were these figures large?

A I can't recall exactly. They were attractive figures. They ran into the possible income of thousands of dollars.

Q Now, did you attend this -- did you attend this meeting at the Golden Gate Inn?

A Yes, I did.

Q Did you attend with anyone else?

A Yes, my fiance.

Q O.K. Will you please tell the Court what occurred first when you arrived at this meeting.

A If I am not mistaken, I believe we signed in and I met Mr. Quack. He introduced me to someone else. I don't recall who it was. We were asked to sit down.

Q I see. Do you know the name of the meeting that you attended?

A It was called an Opportunity Meeting.

Q How many people were present at this meeting?

A I would say about 30 people, 40 people.

Q Did anyone speak to this group of people present?

A Yes.

THE COURT: Let me see. I think initially the witness had answered that he first heard of Galaxy in the fall of '71. Have we fixed a date when this meeting took place.

MR. GARMANSKY: Yes, your Honor. You asked him when he attended. He said subsequently, a few weeks later, I believe was his testimony.

THE COURT: I see. I am sorry. I guess I didn't notice. I was too busy asking questions.

A few weeks after that is when you returned? About October, September?

THE WITNESS: October, perhaps November.

Q Did you know who these speakers were at this Opportunity Meeting, Mr. DeSiglia?

A Do I know now?

Q Did you know then?

A No. Until they were introduced I didn't know who they were.

Q O.K. Who were the speakers at that opportunity meeting?

A I can't recall with any degree of certainty who

they were.

Q How were these people introduced?

A Well, they were -- I don't understand.

Q O.K. When these speakers were introduced, were they given -- was the guest told or were the guests told that they had a title with Galaxy or were part of Galaxy?

A Yes. The speaker would be introduced and he would be called a manager or some part of the Galaxy Board of Directors.

Q Now, Mr. DeSiglia, did any speaker tell the group present how a person could earn money in Galaxy?

A Yes.

Q What were you told at that time?

A We were told specifically that there were two ways we could earn money. One would be to interest -- after we became members of the organization, we could try to get more investors to join and we would receive commissions based on the number of people we brought into the company.

The second way would be the retailing of food to be delivered directly to peoples' homes.

Q Did the speakers tell you how you could join Galaxy?

A Yes.

Q What did they tell you?

A They said we could join in one or two ways. Either as a field manager, with an investment of a thousand dollars, or a distributor with an investment of $3,000.

Q At this meeting were you told specific figures that you could earn if you invested in Galaxy?

A Yes.

Q What were you told?

A I don't recall the exact figures. But typically what was done, on a blackboard or a pad -- I am not sure, but something for everyone to see, the speaker would try to -- would ask the audience to throw out figures.

For example, how much a family of four would spend on food in a week, or how many people we could interest in buying food in this way. And using those numbers and taking a certain percentage of gross sales as commissions, he would arrive at some basic figure for a week or a month or a yearly salary.

Q Did this figure grow and grow as more numbers were thrown out?

A Yes.

Q Do you know who the speaker was who did this part of the Opportunity Meeting?

A I don't recall.

Q Did this procedure subsequently reach a bottom

line figure?

A Yes.

Q Was this figure written on a blackboard or a pad?

A I believe it was, yes.

Q What was the reaction from the people present at this time when this figure was written and mentioned?

A No immediate reaction other than the fact that the speaker would say something to the effect of how about that or isn't that a great amount to earn.

And all of a sudden there would be a round of applause, some clapping, cheering.

Q Do you know where this -- strike that. Do you know where this cheering and applauding started?

A It appeared to start at the back of the room. We were sitting up front. It kind of worked its way up from the back.

Q Do you know who was in the back of the room, Mr. DeSiglia?

A I didn't know any of the people then. But after the meeting I recognized them as -- after I was introduced to them as being members of the Galaxy organization.

Q Were these the Galaxy -- was this the management of Galaxy, the Galaxy executives?

A Some of the executives and other people who appeared to be either distributors or field managers of the company.

Q Now, Mr. DeSiglia, would you explain how you felt when you heard about all this money that a person could earn in Galaxy?

A Well, at first I was a little bit skeptical in that I didn't quite see how people would -- consumers would react to such a plan, whether or not they could introduce enough people to make it worthwhile. And as time went on I sort of -- my skepticism was put aside from -- well, most of it from my own reasoning and by some of the persuasion of the speakers and so forth.

Q Was anything mentioned at this Opportunity Meeting about retirement?

A I believe so, yes.

Q Do you recall what was mentioned?

A A speaker would say after arriving at the bottom-line figure, how many people could retire on that kind of income. And some people would raise their hands. Most everyone.

Q Now, at this meeting you attended at the Golden Gate Inn, did any speaker tell the people present that only New York State residents were allowed to invest in Galaxy?

A Not that I can recall.

Q You are certain of that?

A I am positive.

Q Did you subsequently attend any other Galaxy meetings?

A Yes, I did.

Q What was the name of that meeting?

A I attended what was called the Sunday Step-Up Meeting.

Q When did you attend the Sunday Step-Up Meeting?

A One or two weeks after I attended the first meeting at the Golden Gate.

Q Where was this meeting held, the Sunday Step-Up Meeting?

A It was held at the Galaxy home office in Brooklyn.

Q Were you invited to attend the Sunday Step-Up Meeting?

A I was told about it. I wasn't specifically invited. We were told that every Sunday at a certain time they had what was called a Sunday Step-Up Meeting where investors could formally join the company.

Q Do you know who told you about the Sunday Step-Up Meeting?

A I don't recall who did.

Q Was it the speaker at the Opportunity Meeting?

A Perhaps. I can't recall.

Q Now, between the Opportunity Meeting and the Sunday Step Up Meeting, did you talk to anyone associated with Galaxy?

A Yes. I believe I talked to Mr. Quack again in the interim.

Q Can you tell us what he said to you and what you said to him.

A He asked if we had any questions about the company and the -- generally tried to persuade us to join.

Q At any time in this conversation did Mr. Quack tell you that investors in Galaxy were only limited to New York State residents?

A No. I was never told that.

Q Now, at this Sunday Step Up Meeting were there any speakers?

A Yes.

Q Do you recall how many?

A Not with any degree of certainty. Perhaps one, two. I am not sure.

Q O.K. So you know who the speakers were?

A No, I don't.

Q Were they part of Galaxy Management?

A I believe at least one may have been.

Q How many people were present at this Sunday Step-Up Meeting?

A I would say about 20 people.

Q Did you go to this meeting with anyone?

A Yes. My fiancee.

Q O.K. Do you recall what you were told at the Sunday Step-Up Meeting?

A We were given -- in general we were given a progress report of the -- how the company was progressing, how many investors they had, how many more they needed before they could begin retailing, what their target date was for starting retail operations, the fact that they had done surveys, consumer surveys to see how many people would be interested in their service.

They mentioned that they had contacted several distributors to try to get an idea of prices and so forth of various consumer products that they would buy and channel through Galaxy to the -- eventually to the consumer.

Q Would you tell us what the speaker told you concerning these retail target dates.

A I believe the target date that he said was

January of 1972.

Q O.K. Did the speaker tell you how he arrived at this target date figure?

A Apparently what they looked at was the rate that they were giving to investors and forecasted, and based on that rate, when they would have enough money to start retailing.

Q Now, did there come a time during this Sunday Step-Up meeting when the speaker asked the guest present if anyone was joining Galaxy?

A Yes.

Q Will you please describe to the Court what occurred.

A I believe that the -- before the meeting started the speaker knew that there were some people who were prepared to join. And then during the meeting he asked if there were any people who were ready to join. In fact, I think he said, "I know there are people in the audience who have money, who have checks who want to join Galaxy."

And he asked us to stand up. He asked those present to stand up.

Q Did the speaker ask you to stand up?

A Yes.

Q Did you tell anyone prior to the start of the

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meeting that you intended to join Galaxy at the Sunday Step-Up Meeting?

A Yes. I told Mr. Quack. And I believe Mr. Quack told some of the officers in Galaxy.

Q Will you please describe what occurred after the speaker asked you to stand up.

A I was asked to go to the front of the room where I stated my name. I was congratulated by the man who was speaking at the time. And he took my check.

Q I see. Now, was there any cheering and applauding at this time?

A Yes.

Q How much money did you invest in Galaxy, Mr. DeCeglia?

A I invested one thousand dollars.

Q Now, at anytime during this Sunday Step-Up Meeting did the speaker state that investments in Galaxy were only limited to New York State residents?

A No, he didn't.

Q Now, at the same Step-Up Meeting, Mr. DeCeglia, did you ever see speakers hand out checks?

A Yes.

Q Will you please describe to the Court what occurred.

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A Toward the end of the meeting the speaker would be handed a group of checks. And these checks were apparently for commissions for putting investors into the company. And they were handed out to the people who were the Sponsors.

Q Did he announce the amount of the checks?

A Yes.

Q Do you recall any mentioned amounts?

A I remember one. $2600.

Q Did the speaker make any comment while handing out these checks?

A Yes. I believe -- I believe he did. But I don't remember what it was.

Q Was there any cheering and applauding at this time, Mr. DeCeglia?

A Yes.

Q Will you please describe the speaking characteristics or habits of the speakers as you observed.

MR. GOIDEL: Objection, your Honor. That calls for an operation of the mind.

MR. GARMANSKY: Your Honor, it's the -- it's in the witness' province to testify to this concerning what he observed.

MR. GOIDEL: Not as to opinion.

MR. GARMANSKY: Will you let me finish.

He can testify what he saw, what he heard. He's competent to testify to the speaking characteristics that he observed the speakers of Galaxy -- this goes to our allegation, your Honor, in our complaint, how the speaker spoke, the type of atmosphere generated. It is a fact question.

MR. GOIDEL: Your Honor, he can testify to what was said. And in his own words. And in answer to a specific question he can describe it perhaps as loud or as soft or however he wants. But he cannot characterize what somebody else says. That is improper and that is the exact purpose for which this question was asked.

MR. GARMANSKY: Your Honor, he's not characterizing --

MR. GOIDEL: That is a characterization.

MR. GARMANSKY: What someone else -- he's not characterizing what the person said. He's telling us what he observed. The demeanor of the people who spoke to him at these meetings. He was there. He was present.

You can testify -- in the proposed Federal Rules, Rule 701 -- Rule 701, Opinion Testimony by Lay Witnesses, states that a witness can testify as

to what he observed, the demeanor of other persons that he observed.

It's rationally based on the presentation of the witness and helpful to a clear understanding of his testimony or the determination of a fact in issue.

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MR. GOIDEL: You did not ask him to describe the demeanor of anyone. You asked him to characterize how something was said.

MR. GARMANSKY: No. I said, please describe the speaking habits.

MR. GOIDEL: All right. Speaking habits are not quite the demeanor.

MR. GARMANSKY: I will withdraw the question. I will withdraw the question.

THE COURT: All right. So what you really want to inquire about is this witness' knowledge based on his own observations of the demeanor of those who spoke.

MR. GARMANSKY: Exactly.

DIRECT EXAMINATION

BY MR. GARMANSKY: (Cont.)

Q Can you testify concerning that, Mr. Deceglie, if you have anything to say on that score?

THE WITNESS: Could you rephrase that.

THE COURT: Well, simply stated, did you -- did you observe the demeanor of those who spoke in the audience.

THE WITNESS: Yes.

THE COURT: What did you observe.

THE WITNESS: Well, I observed that they spoke

loudly. They spoke very clearly. They were generally good speakers.

THE COURT: Aren't those characteristics of any good speaker.

THE WITNESS: Yes.

THE COURT: Not necessarily those at a meeting, but anywhere where you would attend.

THE WITNESS: Yes.

THE COURT: Now, was there - was there anything in addition to that that you observed.

THE WITNESS: NOthing really. Nothing other than what one would expect from a good speaker, good posture, good clothes, projecting a voice.

THE COURT: So the rest of it then would be content of what was said, is that it.

THE WITNESS: I believe so.

THE COURT: And have you fully covered your recollection of the content of what was said.

THE WITNESS: I think so.

BY MR. GARMANSKY:

Q Mr. Deceglie, what was your -- what was your impression of these speakers?

MR. GOIDEL: Objection. He just testified.

THE COURT: I will sustain the objection to that.

That is calling for the mental operation of this witness' mind and is improper.

MR. GARMANSKY: Your Honor, I think it is important that this Court understand the type of atmosphere at these meetings at the time.

THE COURT: Mr. Garmansky, if I don't understand it now I would have to be obtuse indeed.

BY MR. GARMANSKY:

Q Mr. Deceglie, did you receive any documents at the time of the Sunday step-up meeting?

A Yes, I did.

Q I would like to show you what has been marked in evidence as plaintiff's exhibit 6. Do you recognize that?

A Yes, I do.

Q Was this the document or a facsimile of this document that you received at the Sunday step-up meeting?

A Yes.

Q Now, Mr. Deceglie, --

THE COURT: Excuse me just a minute. It would help -- does it bear a name.

MR. GARMANSKY: It just says Galaxy Foods, Inc.. It's a xerox copy. Galaxy Foods, Inc., on the bottom. And the first page states, welcome to the Galaxy Team.

THE COURT: All right.

MR. GARMANSKY: This is the script, your Honor

THE COURT: All right.

BY MR. GARMANSKY:

Q Now, Mr. Deceglie, what did you do after the conclusion of the Sunday step-up meeting?

A At the conclusion of the meeting I was taken aside by a secretary and was asked to fill out a form as to my name, address, so on, was the application form, the contractor a new investor in Galaxy.

Q Did you fill out this contract?

A Yes, I did.

Q Did you sign it?

A Yes.

Q What address did you put on this contract, Mr. Deceglie?

MR. GOIDEL: Objection.

THE COURT: It's in evidence or isn't it.

MR. GARMANSKY: No, your Honor. We don't have the contract.

MR. GOIDEL: Perhaps the witness would have a copy of it.

THE COURT: I am sorry.

MR. GOIDEL: Perhaps the witness, your Honor, would have a copy of it, a duplicate original.

THE WITNESS: I don't.

THE COURT: He says he does not.

Was there a reference to that in some document.

MR. GOIDEL: There is reference to it, but not that it is in existence. I believe one of the witnesses said that all applications that he had were turned over to the Securities and Exchange Commission. But that was not to infer that that was one of those that were in existence.

MR. LERNER: Your Honor --

THE COURT: In that case, we don't have any controversy about it. I will permit the witness to answer if he recalls what address he put down as his address on that application.

If you remember.

THE WITNESS: Yes, I do. I put down my Hendham address.

BY MR. GARMANSKY:

Q That is New Jersey?

A New Jersey.

Q Now, Mr. Deceglie, was there anything in the contract that you observed which limited the investments in Galaxy to only New York State residents?

A Nothing. I didn't see anything.

Q Now, I would like to show you -- show to you, Mr. Deceglie, what has been marked in evidence as plaintiff's exhibit 27. Do you recognize plaintiff's exhibit 27?

A Yes. This is a form similar to that that I filled out.

Q Now, in the box in the center of plaintiff's exhibit 27, is that where you filled out your address? The center box?

A Yes.

Q Now, Mr. Deceglie, were you given back a copy of that contract that you signed?

A Yes, I was.

Q Do you know if a Galaxy executive signed your contract?

MR. GOIDEL: Your Honor, I am going to object to the characterization, executive.

Ask who it was that signed it if he knows.

MR. GARMANSKY: I will withdraw the question.

THE COURT: All right.

MR. GARMANSKY: I will withdraw the question.

THE COURT: All right.

Q Mr. Deceglie, did anyone else sign your contract other than yourself?

A I can't say that anyone did with certainty. I

assume that it was signed by someone.

Q No. We don't want your assumption, only if you know.

A I don't know for sure.

Q Who did you give the contract to when you finished with it?

A I returned it to the secretary.

Q Do you know who she gave it to?

A No.

Q Now, prior to joining Galaxy, Mr. Deceglie, did you have any agreement with anyone connected with Galaxy?

A Yes, I did.

Q Who is that?

A Mr. Quack.

Q Would you tell the Court what your agreement with Mr. Quack was?

MR. GOIDEL: Your Honor, I object to any agreement between this witness and Mr. Quack.

MR. GARMANSKY: On what grounds.

MR. GOIDEL: Mr. Quack is not a party to this litigation. Any agreement that Mr. Quack entered into in his own behalf, frankly, is not part of this litigation. It would be hearsay.

I am not concerned with Mr. Quack, who had --

at best would act as an independent contractor in this instance since he would be deriving a profit from the sale of a franchise to this individual. And it is not binding upon any of the other defendants in this proceeding.

MR. GARMANSKY: Your Honor, may I -- I am asking the witness what his understanding of the agreement was. That is not hearsay.

MR. GOIDEL: No. You are asking him about an agreement that he had with Mr. Quack. Not the agreement that he executed here. Any agreement he had with Mr. Quack is not part of this litigation.

Bring Mr. Quack in and then you can try anything involving Mr. Quack.

MR. GARMANSKY: I am not making the agreement per se, Mr. Goidel, part of the litigation. What is his understanding of that agreement.

MR. GOIDEL: Your Honor, if --

Of which agreement? I assume, unless I am incorrect, that you are referring to an agreement other than the agreement evidenced by this blue sheet of paper that you just showed to the witness.

MR. GARMANSKY: That's correct.

MR. GOIDEL: If he had an agreement with the

person not a party to this litigation that is improper at this time.

THE COURT: I think his objection is well taken.

MR. GARMANSKY: Okay.

THE COURT: I'm going to sustain it.

BY MR. GARMANSKY:

Q Mr. Deceglie, did you attend anyother Galaxy meetings after you joined?

A Yes, I did.

Q What meeting did you attend?

A I attended another opportunity meeting.

Q Where was this held?

A This was held at the -- I believe the New York Hilton.

Q When? Do you recall the date?

A I believe it was in December.

(Continued on next page.)

next 4am

DIRECT EXAMINATION (Cont'd.)

BY MR. GARMANSKY:

Q Of what year?

A '71.

THE COURT: Would that have been a Sunday Step-up Meeting?

THE WITNESS: No. That was another Opportunity Meeting.

Q Do you know who spoke at this meeting?

A No.

Q Was this Opportunity Meeting run the same way as the other Opportunity Meeting you attended?

A Yes, it was.

Q Did you hear any speaker at this Opportunity Meeting say, "I smell money in the room"?

MR. GOIDEL: Objection, your Honor. That is leading the witness.

THE COURT: Yes. I don't think you should indulge in that.

MR. GARMANSKY: Withdraw the question.

Q At this Opportunity Meeting, Mr. DeCeglia, did you hear any speaker talk about money?

MR. GOIDEL: Your Honor, I'm going to object. The proper question is, what did you hear said at

this meeting.

THE COURT: Yes.

I think we should first explore the witness's recollection. As to what he heard said at the meeting. Let me say, I would prefer if it was not simply a repetition of what went on in the first meeting but anything of an additional nature.

MR. GARMANSKY: I'll ask that question.

Q Mr. DeCeglia, did anything occur at this second Opportunity Meeting which you attended which was different than the first Opportunity Meeting?

A No. It was run more or less the same.

Q At this second Opportunity Meeting you attended, did any speaker mention that investments in Galaxy were only limited to New York State residents?

A That was never mentioned.

MR. GARMANSKY: At this time I'd like to mark as Plaintiff's Exhibit 29 a Xerox copy of a paper dated December 9, 1971, with the letterhead Franz Quack.

THE COURT: December 9th?

MR. GARMANSKY: December 9, 1971, with the letterhead on this document labeled Franz Quack. Also on this document appear to be three original

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signatures, Franz Quack, Paul DeCeglia --

MR. GOIDEL: Your Honor, I'm going to object.

MR. GARMANSKY: Appears to be, your Honor. I am just identifying it.

THE COURT: Wait a minute. I don't mink you describing it initially as a letterhead of Franz Quack, although that probably is stretching things. At the moment, it is a document dated December 9, '71. You've got to have this witness really identify what it is before we can start talking about its contents.

MR. GARMANSKY: Objection.

THE COURT: That may seem a technical rule but it serves useful purposes. First of all, we don't know whose signatures they are. They may be phonies.

MR. GARMANSKY: Thank you, your Honor.

THE CLERK: A document --

THE COURT: I am not suggesting they are but I am saying that possibility always exests and it has happened in some cases.

THE CLERK: A document marked for identification as Plaintiff's Exhibit No. 29.

(So marked.)

MR. GARMANSKY: Thank you.

BY MR. GARMANSKY:

Q Mr. DeCeglia, do you recollect Plaintiff's Exhibit 29?

A Yes.

Q Would you please explain what Plaintiff's Exhibit 29 is?

THE COURT: Well, first, no. Under what circumstance did it first come to his attention? Was it brought to his attention by a person? Who was that person? Where? And at or about the date it was written or some different date.

MR. GARMANSKY: Thank you, your Honor.

Q Mr. DeCeglia, would you please explain to the Court the circumstance surrounding your first seeing Plaintiff's Exhibit 29?

A I first saw this on December 9th, and this was at the Opportunity Meeting at the Hilton.

Q Who brought it to your attention, Mr. DeCeglia?

A Mr. Quack.

Q Did Mr. Quack give you Plaintiff's Exhibit No. 29?

A Yes, he did.

Q Did Mr. Quack tell you what Plaintiff's Exhibit

29 represented?

A Yes.

Q What did he say to you?

MR. GOIDEL: Objection. If the document is offered in evidence and if it is accepted in evidence, it will speak for itself.

THE COURT: Well, first of all, let me ask you this. Does the document bear the signature of this witness? You may ask him that.

Q Mr. DeCeglia, does Plaintiff's Exhibit 29 bear your signature?

A Yes, it does.

THE COURT: And you signed it at that time?

Q On December 9th?

A Let me say, this is a Xerox. My signature --

THE COURT: We are assuming -- there is no question about its authenticity. You don't have to worry about that.

A This is my signature, yes.

THE COURT: All right.

Q Mr. DeCeglia, did you see anyone else sign Plaintiff's Exhibit 29?

A I don't remember seeing anyone else signing it.

THE COURT: Do you recollect -- since there had been a reference to three signatures, do you recollect the other two signatures on there?

A Yes, I do.

THE COURT: Whose are they?

THE WITNESS: Mr. Quack's and a Mr. Charles Horowitz.

THE COURT: All right. Now --

MR. GARMANSKY: Your Honor, I would like to ask the witness some questions about this document.

THE COURT: All right. Good.

BY MR. GARMANSKY:

Q Mr. DeCeglia, does your signature appear more than once?

A Yes, it does.

Q Is the first signature an original signature by you?

A No, it isn't. It is part of the Xerox signature.

Q I see. So, did you sign this document -- you only signed the document once on December 9, 1971, is that correct?

A Yes.

DIRECT EXAMINATION

BY MR. GARMANSKY (Cont'd):

Q Then you were given a Xerox copy of the document?

A Right.

Q Then you subsequently signed Plaintiff's Exhibit 29 at a later date?

A Right.

Q And that bears your original signature?

A Yes.

Q Now, Mr. Deceglia, how much money -- strike that. You invested $1,000 in Galaxy; is that correct?

A Yes.

Q Was that $1,000 your own money?

A Yes, it was. Well, my fiancee -- it was actually my ifancee's money. She gave it to me to invest in my name.

Q Did you ever receive any return -- strike that. Did Mr. Quack ever give you any money, Mr. Deceglia?

A Yes, he did.

Q How much money did he give you?

A $400.

Q Do you know the reasons why Mr. Quack gave you

$400?

A Yes.

Q Would you please tell the Court what those reasons were?

A He gave me the -- he returned -- he gave me that $400 as an inducement to invest in Galaxy. The $400 represented his commission for bringing me into Galaxy.

Q Mr. Quack was your sponsor, in other words?

A Yes.

Q Mr. Quack turned over the $400 commission he would have received sponsoring you into Galaxy and be gave it to you?

A Yes.

Q Does Plaintiff's Exhibit 29 --

THE COURT: I take it from your testimony then that this was prior to your actual -- actually making the investment you made; is that right?

THE WITNESS: The agreement -- yes. The gentleman's agreement between myself and Mr. Quack was that he would return the $400 after I joined Galaxy.

Q Does Plaintiff's Exhibit 29 represent that agreement with Mr. Quack?

A Yes.

MR. GOIDEL: Objection, your Honor. They've

already gotten in what they wanted to.

THE COURT: Let's see the agreement. Let me see it for a minute.

Do you want to look at it?

MR. GOIDEL: Yes, please.

I have no objection.

MR. GARMANSKY: Offer it into evidence, your honor.

THE COURT: All right.

THE CLERK: So marked as Plaintiff's Exhibit 29 in Evidence.

(So marked.)

BY MR. GARMANSKY:

Q Now, Mr. Deceglia, after you joined Galaxy, did you receive any mail from Galaxy?

A Yes, I did.

Q Where did you receive this mail?

A At my New Jersey address.

Q That's in Mendham?

A Yes.

Q Do you recall what you received from Galaxy in the mail?

A Yes. These were items of a general nature,

Nothing really addressed specifically to me. These were announcements of interest to all the Galaxy investors.

THE COURT: Bulletins, circulars?

THE WITNESS: Bulletins, things like that.

Q Do you recall whether or not you ever received any bulletins or circulars about Opportunity and Sunday Step-Up Meetings?

A I don't recall.

Q Now, Mr. Deceglia, at the meetings you attended, was anything mentioned about a home delivery food service that Galaxy would start?

A Yes.

Q Was this home food delivery service in operation when you invested in Galaxy?

A No, it wasn't.

Q Were any target dates set for that home food delivery serive?

A Yes.

Q What were those dates, the first date that you heard?

A The first date I recall was January of 1972.

Q Did food commence on that -- food operations commence on that date?

A To my knowledge, no.

Q Were any subsequent dates set?

A Yes, I believe so.

Q Okay. Did delivery commence on those subsequent dates?

A I don't think so.

Q Mr. Deceglia, at these meetings you attended, were you told you could earn commissions if your customers ordered food?

A Yes.

Q Did you hear this at all the meetings you went to?

A Yes.

Q Did you ever hear any speaker at the meetings you attended talk about a distribution of free customers?

A Yes.

Q Please tell us what you heard?

A We were told that officially, when the retail business started, that each distributor and field manager would be assigned a certain number of customers and these would form a base upon which he could build and develop his clientele.

Q Do you know whether or not this was ever done?

A Not that I know of, no.

Q Do you know who was to acquire these customers

and -- for distribution to the investors in Galaxy?

A I believe Galaxy was to do that.

Q All right. At the Galaxy meetings you attended, did any guest ask any questions of the speakers?

A Yes.

Q Do you recall any of the questions the guests asked?

A Yes.

Q Okay. Please tell the Court what you recall.

A One question I recall immediately would be the -- someone who expressed uneasiness about how they could get people to come down to join Galaxy Foods.

Q Did the speakers reply to these questions?

A Yes.

Q What do you recall the speakers saying?

MR. GOIDEL: Objection, your Honor. I'm going to ask that if the witness is going to refer to specific questions and answers and specific statements, that he characterize -- not characterize, but identify the individual who is purported to have made the statement.

Q Do you recall the speaker, Mr. Deceglia?

A No, I don't.

MR. GOIDEL: Your Honor, then I will object to

any statement. Certainly I'm not going to have anything imputed to my clients.

BY MR. GARMANSKY:

Q Mr. Deceglia, do you recall whether or not the speaker held any type of position in Galaxy?

MR. GOIDEL: Objection. If he doesn't know who the speaker is, how could he possibly identify him as having a position with the corporation?

MR. GARMANSKY: Very easily.

MR. GOIDEL: Really?

MR. GARMANSKY: I think the witness can answer that question, your Honor.

THE COURT: Well, you have a special problem in this case because we're not dealing with all the defendants originally named. We are dealing with one defendant who, for a period of time, appears to have held what one would consider an executive position of some sort and we are dealing with another distributor. Two other distributors, really.

Where did Mr. Padilla go?

MR. GOIDEL: He just stepped out for a cup of coffee, your Honor. He was a little sleepy.

THE COURT: I see.

Now, I do believe that in order that there

could be effective cross-examination on behalf of those who are the remaining defendants in the case, there would have to be some specification of who said what and when it was said.

Now, I don't know what this witness's recollection may be with respect to anything he heard the defendant Kirsch say at any time that would be of interest here and would be admissible if there is anything specific that can attribute to that, or I suppose even as far as Padilla is concerned or Shevack.

Now, we've had much -- maybe this hasn't been fully -- maybe you don't think it has been fully explored but we've had much concerning the activities of the members of the board of directors and others, what I would call leading figures whose names have cropped up time and time again.

How much of it you wish to review with this witness, I don't know.

MR. GARMANSKY: Your Honor --

THE COURT: My own feeling would be that you were starting to go in a series of meetings with him which got us as far as the New York Hilton in December of '71.

Perhaps you might wish to inquire as to how many

other meetings he may have attended that could be said to be organization type meetings, when they were held, who spoke at them, if he remembers, when and where they were held, and again, whether any significant development occurred that might add to our store of knowledge and not simply repeat the same old format which I think has been fairly well established in this record.

MR. GARMANSKY: Your Honor, this is not the same format. This is a very important point to bring out. The witness does not recall the speaker. He cannot state with any certainty who the speaker was, but I'm about to draw out from the witness with these questions -- I think it is proper that he still testify concerning the questions that he heard from the potential investors, what type of questions they were asking of the speakers at this time, and what answers the speakers were giving.

MR. LERNER: Your Honor, if I may add something?

Isn't it sufficiently relevant if the questions and answers took place at an Opportunity Meeting, at a Galaxy Opportunity Meeting, and that the questions were asked by the audience and the answer came back

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from those on the stage or in front of the room? Isn't there significance to that?

MR. GOIDEL: Your Honor, it certainly wouldn't be relevant at this stage of the proceedings unless it were established, (a) that my client made the statement or any one of my clients made the statement, or that my clients in some fashion acquiesced in the making of those statements.

It would seem to me that to establish it is of those, you must establish the fact that this witness can identify my clients as having attended or been present at those meetings.

THE COURT: Well, yes, I think that much is so.

Now, if we are talking about again, as I said, ...sch or even Padilla or Shevack, being participants in these meetings, active participants in some way, and this witness has anything to say on that subject, I would certainly consider that quite relevant to the issues here.

MR. LERNER: Haven't we established or I think there has been testimony at least that Kirsch, at least Kirsch and Padilla have been participants in other meetings and in the Galaxy organization as a whole and if that be the case, then why cannot they

be attributed statements made at meetings which they may not be identified at if it is part of a Galaxy organization meeting?

Is there an absolute necessity that we -- that a director of a corporation, for example, be present at all meetings to be liable for the acts of the corporation?

MR. GOLDEN: Your Honor, we have many, many issues, of course, involved in this case, and certainly one of the prime issues is going to be what Mr. Kirsch's true position was, irrespective of any designations accorded him by the board of directors of which he was not a member.

He was not a member of the board of directors. He's alleged to have been a member of the "executive board," which legally I question whether there can or is or was such a thing. But I have been very clear in taking objection any time that a speaker is asked to answer a question with regard to a specific comment made by a specific individual or at a specific meeting.

Now, it is true that it has been testified to that Mr. Kirsch attended certain meetings. Unfortunately, I think if one reads the record, nowhere

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will we have the three things which are necessary, all at one time, and that is, was he present and if he were present, what was specifically said and if something specifically was said, to whom it was specifically said.

Nowhere in this record do I think will a reading reveal that we have this.

Now, they're asking this witness another specific question. But they're not trying to pin it down in relation to the individual. Other times they've pinned down the individual but they don't pin down the specific statement. Other instances they may pin down the specific time and not the specific individual That's what we have running throughout this entire record.

I call this to your Honor's attention at the very beginning, the onset of this trial, and now we are once again back in the same position, and I don't want a statement if it is going to be a statement alleging any wrongdoing or any false statements. I don't want it to be imputed to my clients, unless this witness can once again specifically state Mr. Kirsch was present, Mr. Shevack or Mr. Padilla and that they in turn listened to the statement being made or in fact made the statement.

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MR. LERNER: Your Honor, that sounds more to me like Mr. Goidel is making a closing statement.

MR. GOIDEL: No.

MR. LERNER: Than -- please, Mr. Goidel.

MR. GOIDEL: Don't characterize my objection.

MR. LERNER: Than addressing his remarks to this particular situation.

We have argued with Mr. Goidel previously on the law. We have briefed the law. If Mr. Goidel wishes us to brief the law on this point as to participation, we'd be willing to go ahead and do it, providing, of course, he'd provide us with a brief at this time.

In any event --

MR. GOIDEL: Just a moment.

MR. LERNER: We think this point should remain until the final argument and until the final briefs. The question of whether a person who is or is not at a meeting and who is part of an organization is responsible for remarks made at a meeting when he was aware that they were being made is -- is another story.

THE COURT: That is what the assumption is.

For example, if he is aware they are being made.

MR. LERNER: We've had testimony that there were policy discussions at executive board meetings, when statements such as these were being discussed and were being said they were going to be made at meetings.

Mr. Beck has just testified that the questions of bank loans was discussed in Mr. Kirsch's presence at a training session.

MR. GOIDEL: And I did not object to that because you pinned down the individual, the time and the place.

If you want to do it with this witness, you won't get an objection from me.

You will have to leave, of course, the previous testimony that you just alluded to. I'll have to possibly put Mr. Kirsch back on the stand, but at least I have that opportunity. This way I don't.

THE COURT: That is basically the point of it. The defendant, in order to defend himself against specific evidence, has to know with some reasonable degree of certainty what it is he was said to have said. He might be able to prove and corroborate that he never was there and that he specifically on

one occasion said he did not approve of that kind of statement and would have no part of it. These are possibilities.

The problem here is, as I have pointed out earlier, you have a number of defendants who have concented to injunctive relief in this case and thereby conceded the Commission's case as against them.

However, there are several defendants here on trial who are not making those concessions and, therefore, I think the Commission is put to its proof. But that proof has to be in admissible form and it seems to me that even though the burden of proof in this case is not that of beyond a reasonable doubt but simply by a fair preponderance of the evidence, the Court, as the tryer of the fact, has to make something of a specific nature to deal with in making findings.

For example, as I say, a finding which said that these meetings were generally attended by officers or person holding titles that indicated they were officers of Galaxy, who responded to questions from the floor, from people who were either investors or guests of investors, maybe find in establishing the general nature of the scheme, but the issues here,

as I see it, are: Must Kirsch be held responsible for that, must Padilla be held responsible for that, must Shevack be held responsible for that.

Neither -- I suppose Padilla at some point held some position which might be regarded as an executive position; that is to say, national director of wholesaling?

MR. GARMANSKY: Wholesale.

THE COURT: Wholesalers?

MR. GARMANSKY: No, wholesale.

THE COURT: National director of wholesale, and for some period of time he may possibly be held responsible for that which he knew and understood was going on.

But Shevack was just a distributor and --

MR. LERNER: Your Honor, we understand that, concerning Mr. Shevack's position, that he was just a distributor. We don't intend on eliciting any testimony that he was anything more than a distributor.

The questions will come into focus as to how he did his -- how he functioned at his position, and we intend to call on additional witnesses.

THE COURT: Well, I understand.

MR. LERNDER: Mr. Padilla essentially was a distributor as well, although he held a position for a month or a month and a half.

Mr. Kirsch, on the other hand, we have alleged, and we think testimony and evidence has shown and will continue to show, that he was an active member of this company, active management.

THE COURT: I think this is where this kind of proof, though, is not doing anything more than establishing a general atmosphere at meetings without any concrete link between him and the meetings.

MR. LERNER: Well, your Honor, what Mr. Kirsch's responsibility was -- liabilities were concerning statements made at meetings which he either attended or did not attend I think remains to be argued.

I think it is a legal question and I think until we're in a position to argue the legal question, that is, at the end of this case, testimony concerning these meetings should come into evidence, because even his absenteeism from these meetings may be construed -- and the statement made at those meetings may be construed to be held against him.

For example, I suppose you could --

THE COURT: I understand your point. I am

only saying, though, that it does seem to me that some specificity is required in terms of the identity of officers present or the identity at least of a particular speaker who announced some policy.

I do feel that completely faceless discussion of this kind is not sufficient to overcome what I feel are the rules of evidence that should apply.

Now, it may be that if you pick a little bit of this witness' recollection, he may do better. I just do not know.

Are we still, by the way, talking about the Hilton meeting or another one?

MR. GARMANSKY: This I believe is at both opportunity meetings that he attended.

My question was, did any guest ask any questions of the speakers. He response was "Yes."

"Do you recall any of the questions the guests asked?" His response was "Yes" again.

I asked him "Please tell the Court what you recall."

He said what he did and I asked "Did the speaker make any response?" He said "Yes," and I said "What did the speaker say?"

That is when Mr. Goidel objected.

THE COURT: Yes. But for instance, as I recall, and perhaps I am assuming that these speakers were some he had previously identified. Let's see. No. No, he did not.

Simply heard them described by -- as a manager or member of the Galaxy board of directors. Some he recognized as people connected with Galaxy, some distributors, field managers.

MR. GARMANSKY: Your Honor, if I may interrupt? I will withdraw the question concerning what the speaker stated in response to these questions and I will continue.

THE COURT: I want to give you the opportunity to introduce your proof. You understand that.

MR. GARMANSKY: Yes, your Honor.

THE COURT. I am simply pointing out to you the difficulty which occurs when the proof trails off into unidentified speakers, unidentified times, and if we are going to come down with some findings with respect to specific defendants here, which is what we will ultimately have to have, it will be a real problem making the connection.

MR. GARMANSKY Okay, thank you, your Honor.



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DIRECT EXAMINATION (Cont'd.)

BY MR. GARMANSKY:

Q Did you attend any formal training sessions at Galaxy?

A No.

Q Were you ever told by anyone in Galaxy any methods for recruiting people into Galaxy?

A Nothing than how to or where to meet people and things of that nature.

Q Would you please the court what you were told and by whom?

A Many times -- or, the speaker, such a question would be asked at a meeting or even outside of the meeting.

MR. GOIDEL: Objection. We are getting back to what we were arguing about two minutes ago.

Q Do you recall any speakers at the meetings who talked about sponsoring new people into Galaxy?

A I don't recall a specic person.

Q You don't recall any specific names?

A No.

THE COURT: Could we ask the witness for example, are you acquainted with, what is his first name, Mr. Kirsch's first name?

MR. GOIDEL: Donald.

THE COURT: Donald Kirsch.

THE WITNESS: No, I am not.

THE COURT: You never remember meeting him or hearing his name mentioned?

THE WITNESS: No.

THE COURT: How about George Padilla?

THE WITNESS: No.

THE COURT: And Arthur Schnakenberg?

THE WITNESS: No.

THE COURT: Do you have any names at all that, if you stop for a moment to think, would come into your mind as names you identified with faces of people who were connected with Galaxy?

THE WITNESS: Yes.

THE COURT: Who would they be?

THE WITNESS: One of them I am definitely sure is Mr. Horowitz.

THE COURT: Charles Horowitz?

THE WITNESS: Yes.

THE COURT: Anyone else?

THE WITNESS: I recall names but it would be difficult for me to associate the face with the name right now.

THE COURT: Was Charles Horowitz someone you

saw frequently at meetings?

THE WITNESS: Yes, sir. I was personally introduced to Mr. Horowitz at the first meeting I attended. I saw him at ever other meeting I attended.

THE COURT: Did that include these training sessions?

THE WITNESS: I did not attend these training sessions. The first Opportunity, the Sunday Step-up Meeting I attended and the final meeting at the Hilton was an Opportunity Meeting I attended.

THE COURT: And that was the last meeting you attended?

THE WITNESS: Yes, sir.

BY MR. GARMANSKY:

Q Excluding the speakers at the meetings, did you have any discussion at Galaxy concerning the recruitment into Galaxy?

A Yes.

Q Who did you have that discussion with?

A Mr. Quack and Mr. Horowitz.

Q Tell the Court what Mr. Quack and Mr. Horowitz said to you and what you said to them?

A Well, I expressed my uneasiness --

MR. GOIDEL: Excuse me. I am going to object

again unless it is established that they were speaking of one of the defendants. You know circuitously --

THE COURT: No, I think you are putting too much of a restriction there. Even though the Commission has, as they say, agreed with a number of the defendants to accept their willingness to agree to injunctive relief, I still think it is encumbent on the Commission as part of its case against the defendants on trial to prove, one might say, the basic jurisdictional facts, and that is to say the nature of the transactions which the Commission asserts were a violation of law.

Now, that is the predicate for encouraging a case against the three defendants on trial. In addition, of course, they have to show that the three defendants on trial were somehow linked to that operation and also whatever else may need to be shown to warrant the imposition of injunctive relief as against them. You don't disagree with that?

MR. GOIDEL: I don't disagree with one word you just said.

THE COURT: I take it that the proof that Mr. Garmansky is trying to elicit from this witness, while it may have a bearing on the case as against

your client, clients, I guess you have two of them and Mr. Padilla, still I view it as more focus upon the jurisdictional facts of the nature of the Galaxy operation, in a general way.

MR. GOIDEL: I appreciate all what your Honor is saying and I urge you to think about this --

THE COURT: Perhaps let me say from the investor's standpoint, this man is on the stand as a former investor for a period of time.

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Samrla

1 Deceglia - direct

MR. GOIDEL: We have this plural situation, let's tak Mr. Quack. He could conceivably be thought of as acting in various capacities. He could, for example, conceivably be thought of as acting as an officer of Galaxy Foods. On the other hand, he could be conceivably thought of acting on his own capacity as an independent contractor. He could be thought of in other capacities.

The witness is about to discuss from what I gather things that originate from Mr. Quack's mouth. Mr. Quack is not a party to this action. If it is established that Mr. Quack at that moment was speaking as an officer of the corporation, fine, you won't hear an objection from me, because an officer of the corporation theoretically can bind his principal and it would behoove me on cross-examination if I chose to do so, to bring forth testimony that he was not speaking for the corporation.

I have to know whether it is being alleged at that moment that Mr. Quack is speaking for Mr. Quack or whether he is speaking for the corporation.

If I learn he is speaking for himself at that time then I have an obligation to raise the objection of hearsay because he is not a party to this proceeding,

and the whole would hold true for any other alleged participant, was he speaking for the corporation or for himself.

If it is a transaction involving himself where he is going to derive the benefit of and he is not a party of this proceeding, then anything in that vein would be hearsay. An exception to the hearsay would have to be demonstrated, (1) being that he was speaking for the corporation in the normal course of his duties, as a corporate officer, but I think they have to lay that foundation.

MR. LERNER: I think Mr. Goidel's comments are accurate to an extent.

First of all, I don't think the witness can testify as to whether Mr. Quack was acting for the corporation.

The witness can't testify as to what he believes. The witness can't testify as to what may ultimately be Mr. Quack's apparent authority or actual authority.

The corporation may have held him out to be a particular person and he may be acting within that apparent authority. The same goes for Mr. Horowitz,; if he knows what Mr. Horowitz's position was in the corporation, it would be legitimate for him to assume

Mr. Horowitz was acting for the corporation when discussing Galaxy Foods. This is a legal question which would have to be argued in our briefs.

MR. GOIDEL: Mr. Lerner has appropriately said this witness could not testify. Perhaps I don't all together agree because certainly he wanted to testify about an agreement made between him and Mr. Quack, individually, and circuitously that it is in the record right now.

I am not here to tell the SEC as to what they should have done in preparing this case. Frankly, if I wanted to have testimony with regard to Mr. Quack and Horowitz, I would have had them named as party defendants and there would be no problem --

THE COURT: Is Horowitz a party defendant?

MR. GOIDEL: Yes, but Quack is not. I probably would have had Horowitz in Court and put him on the stand and testify as to his relationship to the corporation.

I am not here to do that. I am here as an attorney representing two clients and when a question is put that could impute my clients, it is my duty to object.

MR. LERNER: We have a stipulation that he was

president of the executive board.

THE COURT: I don't think his objection is directed toward any testimony as against Norowitz. It is only as to Quack whose role here is somewhat ambivalent inasmuch as there was some mention of Quack as having some connection with warehouse operations

MR. LERNER: I think it is legitimate and I think Mr. Goidel is right, that we ask the witness if he believed Mr. Quack was working for the corporation, whether he was an officer or corporate officer of the -- Isn't so much his opinion, was he told by Quack that he had an official position with the corporation.

I will permit that. Was he ever told that by Quack?

(Last question read.)

BY MR. GARMANSKY:

Q Mr. Deceglia, did Mr. Quack ever tell you what his position in Galaxy was?

A Yes.

Q What did he tell you?

A I can't think of the exact title but I will describe it. He was supposed to be in charge of setting up

a European operation, a European branch of Galaxy Foods. This is one thing. I am not sure if he had any other function.

Q This is what Mr. Quack told you?

A This -- well, he told us and other people in the company told us, other members of the Galaxy organization.

MR. GOIDEL: I move to strike that last statement unless the individuals are described.

A stranger can't walk up to me and say, "I was associated with 'X'."

THE COURT: I will strike that part of it, but not as to what Quack told him.

MR. GOIDEL: Not as to what Quack told him as to his alleged capacity with the corporation.

THE COURT: Right.

BY MR. GARMANSKY:

Q Did you ever hear of the Galaxy executive board?

A Yes, sir.

Q Did Mr. Quack tell you he was a member of that board?

A I don't remember him saying that.

Q Did Mr. Horowitz ever tell you his position in Galaxy?

A Yes.

Q What did Mr. Horowitz tell you?

A I don't remember the exact title, some nebulous title. I can't really recall.

Q Do you know whether or not Mr. Horowitz told you he was a manager of the Galaxy executive board?

A I can't remember what the executive board was. I don't remember if Horowitz was part of that.

Q When did this conversation with Mr. Quack and Mr. Horowitz occur?

THE COURT: Did you mean you spoke to Mr. Quack and Mr. Horowitz together or separately?

THE WITNESS: I believe we did speak together.

THE COURT: When would that have been?

THE WITNESS: This occurred at least twice, I believe, the first Opportunity Meeting --

THE COURT: At the Golden Gate?

THE WITNESS: Yes, when I first met Mr. Horowitz. Mr. Quack introduced me to Mr. Horowitz.

THE COURT: And it was at this time that he mentioned this European branch operation?

THE WITNESS: I am not sure if it was at that time but it was brought out during the meeting. I think, that several members of the Galaxy board were introduced and titles were given and I remember

Mr. Quack, it was said, was in charge of setting up some future European operation.

MR. GOIDEL: May I be excused for just two minutes?

THE COURT: All right. I suppose we ought to take a brief break.

Let's take a break for 10 minutes.

(Recess taken.)

2 fols. (Continued on next page.)

(After recess.)

DIRECT EXAMINATION

BY MR. GARMANSKY: (Cont.)

Q Did you have conversations with Mr. Quack and Mr. Horowitz at both the opportunity meetings you attended concerning the recruitment of people into Galaxy?

A Yes.

Q What did Mr. Horowitz say to you?

A I can't attribute any specific comments to Mr. Horowitz, but one or the other or both said these things and that was --

MR. GOIDEL: Unless he can identify which one of the two individuals made the statements, I must object.

THE COURT: Well, I thought the question related to Horowitz.

Did I mishear?

MR. GARMANSKY: I asked him what Horowitz said to him, both Mr. Horowitz and Quack were present at these meetings and the witness replied he cannot attribute -- he has no independent recollection.

He knows both were there but he cannot say whether it came out of Mr. Horewitz or Mr. Quack, but both were present and this was right after an opportunity

meeting concerning the operations of Galaxy and both people were part of Galaxy. It should be allowed to be admitted or the witness can testify that the one person or the other person disagreed or said something not contrary.

It should be allowed to come in.

THE COURT: You say you are unable to separate in your own mind, at least at these meetings what Horowitz said to you or what Quack said to you.

THE WITNESS: Yes.

THE COURT: Well, all right, I will overrule your objection with respect to these limited meetings he had with Horowitz and Quack, to see what he says here.

Go ahead. You tell me what, naturally I would like to have any specific conversations, but if the best you can do is the substance of it, I will permit you to state that.

THE WITNESS: I had expressed some doubt in my mind as to whether I could influence people enough to get them to join Galaxy Foods and I was told, I can say Mr. Quack told me specifically where, how and why I should meet people and try to get them down to the meetings, basically and what he said was, wherever you

meet people is where you can find people who will be interested in making some money and joining an organization like ours.

BY MR. GARMANSKY:

Q ANy specific examples given where to find these people?

A Yes, Mr. Quack gave one example. He got someone to come down who had been driving a taxicab.

He said in driving he had struck up a conversation with the driver and said, why don't you come down to the meeting. He got the man to come down and ultimately to invest.

Q Did either Mr. Horowitz or Mr. Quack tell you what to say to an individual to try to get him to attend a Galaxy meeting?

A Basically I was told not to try to sell the company and its whole plan in its entirety in any initial meeting with a prospective investor. My function, as I saw it, was to bring the prospective investor to an opportunity meeting where he could see a formal presentation and all the facts given to him in a coherent way.

Q Now, could you please tell us what did you perceive your role to be in Galaxy vis a vis potential investors?

A As I saw it my role was to try to get people to

come down to meetings where they could be given a normal presentation, the speakers who were able to feel questions would be able to present the plan to potential investors.

Q Did your association as a field manager with Galaxy terminate at any time?

A Yes.

Q How long were you associated with Galaxy?

A I don't recall the exact date when I signed the contract. It was sometime in the fall of 1971 until May of 1972.

Q Would you please describe to the Court how your association with Galaxy terminated?

A I received a phone call from Mr. Horowitz one day. He informed me there was some legal problem in my being a New Jersey resident and holding a field management in Galaxy Foods which was in New York.

At that time he said I could do one of two things, pull my funds out, my investment out of Galaxy or if I could give him a New York address, to establish some New York residency I could stay with the company.

I asked him to give me a week to think it over and in a few days I called him back and informed him that I wish to draw my investment or withdraw my investment.

Q Where were you when Mr. Horowitz called you?

A At home in New Jersey.

Q You then subsequently called Mr. Horowitz and told him you wished to have a refund of your investment?

A Yes.

Q Please describe to the Court exactly if you did, how you received your refund?

A I was asked by Mr. Horowitz to visit the Galaxy offices in Brooklyn and at that time he would give me a refuhd. He also asked me to bring my copy of the contract with me.

Q Did you go down to Galaxy's offices?

A Yes.

Q When did you go?

A I believe it was May 3rd, 1972.

Q Who did you see when you arrived at the offices?

A I saw Mr. Horowitz, specifically, and I also ran into Mr. Quack.

Q Would you please describe what occurred at the Galaxy offices?

A Mr. Horowitz gave me my refund in a check form, $600 refund.

Q Please tell the Court why you only received $600 on a $1,000 investment?

MR. GOIDEL: Objection. It has been established that he got $400 immediately after he joined the

organization.

THE COURT: I am not so sure --

MR. GARMANSKY: I don't know how if that is so the witness cannot explain that.

THE COURT: Where is that particular exhibit that had been admitted concerning that?

I will take his explanation on that.

(Continued on next page.)

JB 6am?

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Deceglia-direct

Q The question was, Mr. Deceglia, please tell us why you only received $600 back on a $1,000 investment?

A Because, in fact, that was all the money I invested. The other $400 was returned to me by Mr. Quack as an inducement to join Galaxy.

MR. GARMANSKY: At this time I would like to mark as Plaintiff's exhibit 30, a check stub from Galaxy Foods, Inc., with the amount of $600 on it, dated 5/3/72.

MR. GOIDEL: Your Honor, I think the best evidence would be the check, not the check stub.

THE COURT: Have you got the check?

MR. GARMANSKY: Your Honor --

THE COURT: I'm sure if you had it, you would have it here.

MR. GARMANSKY: I did look for the check. I may have it in the office.

THE COURT: I see.

MR. GARMANSKY: I wish to show this document to the witness to get his recollection.

THE COURT: Well, of course, the witness wouldn't have seen the check stub, would he?

MR. GARMANSKY: Yes, he did. It was attached.

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THE COURT: You mean it's one of those coupon --

MR. GARMANSKY: Yes.

THE COURT: I see.

MR. GARMANSKY: I would also like to mark as the Commission's exhibit 31, another checkstub dated 5/3/72 for $400.

THE COURT: What was the agreement?

THE CLERK: The first one --

MR.GARMANSKY: 29 was the agreement, your Honor.

THE CLERK: The first one is Plaintiff's exhibit Number 30.

The second checkstub is Plaintiff's exhibit 31 for identification.

So marked.

(So marked.)

Q Mr. Deceglia, do you recognize what has been marked for identification as Plaintiff's exhibit 30?

A Yes.

Q Would you please tell us what it is?

A This is a stub which was attached to the check which was given to me as a return for my investment in Galaxy .

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Deceglia-direct

Q Do you recollect what has been marked as Plaintiff's exhibit 31 for identification?

A Yes. This is a similar stub attached to another check for $400 which was a return of commissions for field manager residing outside of New York. The check which was attached here subsequently, subsequently went back to Mr. Quack.

Q Thank you.

MR. GARMANSKY: I'd like to offer into evidence what has been marked Plainttif's exhibit 30 and 31.

THE COURT: Do I understand that you endorsed that check over to Mr. Quack?

THE WITNESS: I am not sure, but that's -- I'm not sure whether that was --

THE COURT: In other words, you really received two checks? One for $600 and one for $400? 600 was the return of your investment?

THE WITNESS: Right.

THE COURT: 400 was the return of the commissions?

THE WITNESS: Right.

THE COURT: That had been earned outside New York?

THE WITNESS: Yes.

THE COURT: Which you transferred to Quack; isn't that so?

THE WITNESS: I'm not sure if that is what happened, whether the check was made out to me or Mr. Quack is not clear in my mind.

But the check ultimately went to Mr. Quack. Whether I endorsed it or whether it was made out to him, I am not sure.

THE CLERK: Plaintiff's exhibit 30 and 31 now marked in evidence.

(So marked.)

MR. GARMANSKY: Your Honor, the books and records which were marked as defendant's exhibit -- defendant's exhibit G reflect that these two checks were made payable to Mr. Deceglia.

THE COURT: That was my recollection.

MR. GARMANSKY: That's correct, your Honor.

Q Now, Mr. Deceglia, what did you do with your copy of the contract at this time?

A I gave it back to Mr. Hurwitz.

Q Mr. Deceglia, after this refund of your investment which you just described, did you have any further dealings with Galaxy?

A No. That terminated my association with the company.

Q Did you earn any money at all in Galaxy?

A No, I didn't.

MR. GARMANSKY: We have no further questions, your Honor.

THE COURT: I'd like to ask Mr. Deceglia a few questions.

I realize that your period with Galaxy was relatively short. Do I understand that at the time that you were persuaded to invest in Galaxy, you had come around to the point of view that this kind of retail food distribution was a good idea?

THE WITNESS: Well, initially I did have some skepticism. But, as you say, I did eventually decide that for a relatively small investment, the possibility for a large return was fairly good.

THE COURT: Now, when you speak of a small investment and a large return, did you contemplate that you would expend future efforts in the organization of some kind?

THE WITNESS: Yes. I thought with a 600 -- an initial $600 investment, all I had to do was get two people to join and I would make my initial invest - ment back.

In that sense I didn't think it would be very difficult to get two people to join. And anything beyond that would be --

THE COURT: Gravy?

THE WITNESS: Pure profit. Yes.

THE COURT: But did you have in mind, though, any additional activity, other than recruiting two people?

THE WITNESS: Well, ultimately, when the retailing business started, I would assume that through training or other means, I would be able to get customers, people to buy food, and thereby build up a retail organization.

THE COURT: Well, was that your understanding of how the plan would eventually work?

THE WITNESS: Yes.

THE COURT: That is to say, you would be called upon to exert some efforts to develop either directly or indirectly through any sub-franchisee, a consumer market for the services offered by Galaxy?

THE WITNESS: Yes. That's right.

THE COURT: But after this December meeting at the Hilton -- I noticed that -- did you embark

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or undertake any efforts after that December meeting?

THE WITNESS: No, I didn't. I took a relatively subdued role. I didn't pursue it in any way. I did talk to some people about the investment possibilities, but I did not succeed in getting anyone to join up.

THE COURT: I see.

Did you get anyone to attend the meeting at all?

THE WITNESS: No. I don't think I really pursued it with enough vigor to get anyone down there.

THE COURT: You were actually pursuing full-time employment at Bell?

THE WITNESS: Yes.

THE COURT: All right.

Mr. Goidel, do you want to start a few questions?

MR. GOIDEL: Yes, sir.

CROSS EXAMINATION

BY MR. GOIDEL:

Q Did you, however, understand, in order for you to derive any benefits or any remuneration from Galaxy Foods, that you would ultimately have to perform services

of some sort?

A Yes.

Q Sir, I only have a few questions to ask you.

Several times during the course of your testimony in answer to a question, you stated -- and I am trying to quote you -- "My New Jersey address."

And am I to infer from that, sir, that you also had a New York address?

A I had whatever address I had before I moved to New Jersey, yes.

Q What was that address?

A Exact address?

Q Yes.

A 401 4th Avenue, Brooklyn, New York.

Q Was that an apartment that you maintained or that your family maintained?

A My family lived there.

Q Did you continue to utilize that as an address subsequent to moving across the river to New Jersey?

A No. All my future correspondence, whenever I established new correspondence, I gave my New Jersey address. Whatever mail went to my parents' home was junk mail, nothing of any importance. All my important mail was -- for example, my school mail, went all to my New Jersey

address.

Q How about your registration for voting?

A I was registered in New York, yes.

Q Now, sir, I believe you said that the now Mrs. Deceglia, who was then your fiancee --

A Right.

Q -- gave you the money to invest. And I don't recall if you said for her, but in your name or what?

A The investment was made in my name. She gave me $1,000 out of her own money.

Q Was this investment that you made considered by you to be your investment or her investment?

A Well, in effect, it was our investment. In other words, we had planned to marry, and we did subsequently marry. However, my name alone was on the contract.

Q I understand. But did you assume that at that moment until such time as you did marry, that that investment that you held was for the beneficial right of your then fiancee?

A Yes.

Q And if you had not married and you received this thousand dollars, in return for that thousand dollars that you had invested, would you have returned it to your wife?

MR. GARMANSKY: Objection, your Honor.

THE COURT: Well, let me see. Read the question.

MR. GOIDEL: Your Honor, I am going to--- I am asking a hypothetical, your Honor, I agree, but I am asking a hypothetical that goes to the state of mind of this individual as to what he believed this investment was for and for whom this investment was.

MR. LERNER: Can we get to the relevancy of all this?

MR. GOIDEL: Yes. The relevancy is whether or not this was the sale -- actually a sale to a non-resident.

MR. LERNER: Galaxy sold this franchise to a non-resident. That's in the testimony.

MR. GOIDEL: Well, the question is, did they sell to a non-resident. And that's questionable now that his voting address is established. Did they sell to a non-resident or sell to a resident of the state, but to have it held by the non-resident for the beneficial rights of the resident.

MR. GARMANSKY: Your Honor, the testimony is that Galaxy was -- that the Galaxy franchise was sold

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to Mr. Deceglia, a New Jersey resident.

MR. GOIDEL: I understand what the testimony is.

MR. GARMANSKY: Let me finish.

MR. GOIDEL: This is cross examination.

MR. GARMANSKY: Let me finish. I understand what it is.

Your Honor, the testimony is that Galaxy sold it to Mr. Deceglia with a New Jersey address. It is irrelevant whether or not there was any understanding with Mr. Deceglia and his wife, who would get what if they didn't marry. It's what Galaxy knew at the time. This is all irrelevant. Unless Mr. Deceglia brought this out with the management of Galaxy, perhaps, but otherwise it is irrelevant whose benefit it was for or anything else. It was what Galaxy knew at the time.

THE COURT: I'm inclined to agree with that, Mr. Goidel.

MR. GOIDEL: I can only reconstruct that if it were in reverse, that the Securities and Exchange Commission would be standing on their feet screaming that a sale was made to a non-resident even though the certificate may have been handed over

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Deceglia-cross

to a resident who held it beneficially for a non-resident.

MR. LERNER: Your Honor, that is true. That is the law, your Honor. But the fact is that the converse isn't necessarily true.

(continued next page.)

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6am2

MR. GOIDEL: We don't know yet. Just might be. That's something for me to establish. But first I must get out the facts.

THE COURT: Well, as I understand it, he's already answered your question to the effect that he considered the investment "ours", meaning both.

MR. GOIDEL: If they were to marry.

THE COURT: If they were to marry.

MR. GOIDEL: But as of that moment --

THE COURT: I don't know about the "if" part of it. He said they expected to marry.

MR. GOIDEL: I am asking now if they had not married -- or I asked that previously, that had they not married, would he have it considered his wife's.

MR. LERNER: Let him ask if there was a discussion between the parties.

THE COURT: All right.

MR. GOIDEL: All right, let me take it a different way.

THE COURT: If you want to explore if there was a discussion, that's one thing. I think the hypothetical as you called it is really speculation.

MR. GOIDEL: All right.

Q You had a meeting at your prospective in-laws'

home at which time you were introduced to this situation; is that right?

A Yes.

Q Was your prospective bride there?

A Yes.

Q And her parents?

A Yes.

Q Mr. Quack?

A Yes.

Q Was a discussion had at that time concerning whose name to list or to register the franchise in?

A No.

Q What was said? Do you recall?

A In that respect, nothing was said.

Q Was anything ever said to the corporation or to Mr. Quack or to Mr. Horowitz or to any of these people whom you have mentioned before -- was anything said to them at all about you having received the money from the future Mrs. Deceglie?

A Nothing at all.

Q Nothing at all. Okay.

Now, you say you voted in New York State?

A Yes.

Q Or that you were registered to vote in New York

State?

A Yes.

Q Did you vote in that election?

A Which election?

Q Well, you joined in the fall of 1971. So that would be November of 1972?

A That's correct.

Q Where did you vote?

MR. LERNER: He didn't testify he voted.

THE WITNESS: I don't think I did.

Q I'm sorry. I thought my question was, in November of 1972, did you vote?

THE COURT: '72?

MR. GOIDEL: '71, I am sorry.

MR. LERNER: Was there an election, I think should be the first question. Was there an election in '71.

MR. GOIDEL: There is an election for every November for some office.

MR. LERNER: Okay.

MR. GOIDEL: For something.

THE WITNESS: I don't believe I did.

Q Okay. When did you register to vote in New Jersey if at all?

A I did. And I don't recall exactly when I registered.

Q Do you recall what year?

A No, I don't.

Q Was it in 1971 or would it have been later than '71?

A Possibly later. I don't think I voted in that election. I probably voted in the '72 election. In fact, if that was the Presidential election, yes.

THE COURT: '72.

THE WITNESS: Yes, I did. I definitely voted.

Q In New Jersey?

A In New Jersey in '72, yes.

Q But you don't recall when you first registered to vote in New Jersey?

A Whatever the registration period was preceding the '72 election. That's when I registered in New Jersey.

Q Were you full-time employed at that time in '71?

A Yes.

Q When you moved?

A Yes.

Q And your wife to be resided in New York?

A Yes.

Q Did you live at all in the State of New York during that period of, say, 5, 6 months that you were a franchisee?

A What do you mean by live? I occasionally --

Q Sleep.

A I slept at my parents' home on many occasions.

Q Many occasions.

Did you maintain any savings account or checking accounts in New York?

A Yes. I had one savings account.

Q When was that ultimately moved from New York, if at all?

A It was never moved.

Q It's still here? Here in New York?

A Yes.

MR. GOIDEL: I have no further questions.

THE COURT: Let me ask you this question. Was it expected that if you retained this investment your wife would become the activist in the operation?

THE WITNESS: I don't think we ever reached any kind of agreement like that.

THE COURT: Something that she could do while being a housewife.

THE WITNESS: I don't think she ever intended to

become a housewife.

THE COURT: I see. She was also employed?

THE WITNESS: Yes.

THE COURT: And is?

THE WITNESS: Yes.

MR. GOIDEL: One other question, if I may.

CROSS-EXAMINATION

BY MR. GOIDEL: (Cont.)

Q Were you married at the time of the refund?

A Yes.

THE COURT: All right, he was.

MR. LERNER: Now you know who got the money.

CROSS-EXAMINATION

BY MR. PADILLA:

Q I only have one question. Mr. Deceglie, do you know me?

A - No, I don't.

Q Did you ever hear my name before today?

A Yes, I did.

Q Did you ever hear my name during your association with Galaxy Foods?

A Not during the time of my association.

MR. PADILLA: That's all. Thank you.

THE COURT: Well --

MR. GARMANSKY: No further questions, your Honor.

THE COURT: All right, Mr. Deceglie, you are free to go.

(Witness excused.)

THE COURT: All right, 2 o'clock.

What did you say?

MR. LERNER: Could we start at 2 o'clock.

THE COURT: Yes, 2 o'clock. I will be willing to start at 2.

MR. LERNER: Fine. The earlier the better. We have a witness ready right now.

THE COURT: All right.

(Luncheon recess taken.)

PM next

2:00 p.m.

MS. MYSLIWIEC: Plaintiff calls Mr. Branch Simmons to the stand.

B R A N C H S I M M O N S, residing at 23 Jefferson Place, Hempstead, Long Island called on behalf of the plaintiff, having been first duly sworn by the Deputy Clerk, testified as follows:

THE CLERK: What is your full name for the record.

THE WITNESS: Branch, B-r-a-n-c-h Simmons, S-i-m-m-o-n-s.

THE CLERK: Thank you very much. Will you kindly take the witness stand, sir?

DIRECT EXAMINATION

BY MS. MYSLIWIEC:

Q Will you state your name for the record?

A Branch Simmons.

Q And your address?

A 23 Jefferson Place, Hempstead, Long Island.

Q What is your educational background?

A 11th grade.

Q And your present employment?

A Trygon Electronics.

Q In what capacity are you employed by Trygon?

A Prototype technician.

Q Did you ever hear of a company called Galaxy Foods, Inc.?

A Yes.

Q When for the first time after July of 1972? And what were the circumstances under which you heard about Galaxy?

A By two men approaching me at a light at North Franklin Street in Garden City and asking me whether I would like to make a lot of money.

They didn't announce any names. They just asked me whether I would like to make a lot of money.

Q Were you in a car at that time?

A Yes.

Q Were they in a car at that time?

A Yes.

Q Do you know who those two men are?

A Yes, I know who they are now.

Q And you didn't know them at the time?

A No.

Q But you subsequently found out who they were.

A Yes, later that night.

Q Can you tell us their names?

A Arty Shevack and the other one was Peter. I

don't know his last name.

Q Do you recall whether it was Peter Cancilla?

A I don't remember his last name.

Q Now, did both gentlemen speak to you?

A Yes, but mostly Arty Shevack.

Q Now, this was while you were riding in a car at a light?

A Yes.

Q What did Mr. Shevack say to you about Galaxy Foods?

A Would you like to make a lot of money. So I said, "yes, doing what?"

Q What was his response?

A He says, "Come and go with me.

Q Go where? Did he say?

A He said -- in the beginning he asked me where was the Hempstead Motor Inn. So I told him it was in Hempstead down on Hempstead Turnpike. I knew where it was.

I told him how to get there. Then he said, "Would you like to make an awful lot of money?"

So I said, "Yes."

So he said, "Just show me where the Hempstead Inn and then I will explain it to you."

Q Did you show him where it was?

A Yes, I did.

Q Did you proceed to the Hempstead Motor Inn?

A Yes.

Q Did Mr. Shevack follow in their car?

A Yes, in his car, yes.

Q Can you tell us what happened when you got to the Hempstead Motor Inn?

A Yes sir, we got out of the car. He was talking. He says, "Come on inside. Let's go downstairs. They are having a meeting downstairs."

So we went downstairs and they were explaining how you can make $60,000 or more by investing into Galaxy Foods.

Q Now at this meeting, do you know what type of meeting this was?

A I later learned it was called an opportunity meeting for Galaxy.

Q And it was run by Galaxy Foods?

A Yes.

Q Did you attend any other meetings -- opportunity meetings run by Galaxy after this first meeting?

A Yes.

Q And how many opportunity meetings of Galaxy did you attend before you joined Galaxy?

A Approximately three or four.

Q Was Mr. Shevack present during this first opportunity meeting that you attended at the Hempstead Motor Inn?

A Yes.

Q Was Mr. Shevack present at the other opportunity meetings you attended before you joined?

A Yes.

Q Where did you sit at this opportunity meeting?

A I sat approximately in the middle of the room that we were sitting in.

Q Where did Mr. Shevack sit?

A Next to me.

Q Can you tell us what transpired at the first meeting you attended before you joined Galaxy?

A There would be someone come up and explain how you can invest in Galaxy. They would announce an investment into Galaxy. They would start to explain how you can make $60,000 by investing into Galaxy and thereby--

Q Do you know the names of any of the speakers at this first meeting?

A I later learned Ralph Martin was one of the speakers.

Q Do you know the names of any other speakers?

A Arty Lee, Steven Roth, and Charlie Horowitz. That is all I remember.

Q Do you remember which speaker mentioned the amount of $60,000?

A Arty Lee.

Q Now, can you tell me how the $60,000 was presented to you or explained to you?

A By figures on the board, by figuring out how much percentage wise after Galaxy was delivering to their customers, you would get so much percentage wise from their customers buying through Galaxy.

Q What did this $60,000 represent to you? Did they explain this was salary?

A Yes.

Q Did they explain at the meeting? Did any speaker tell you about other ways that you could make money by joining Galaxy?

A In joining Galaxy if other people came down to invest into Calaxy at an opportunity meeting.

Q This was explained at the first opportunity meeting at which you were present?

A No.

Q When was this explained to you?

A At the second opportunity meeting that I

attended.

Q Before you joined?

A Right.

Q Do you remember who explained how you could make money by getting people to invest in Galaxy?

A Ralph Martin.

Q Now, when the figure of $60,000 was written on the blackboard, was there any response from the audience?

A Yes, there was some aplauding and cheering.

Q Did you see Mr. Shevack applauding?

A Yes.

Q Did you observe him at every opportunity meeting where both of you people were present?

A Yes.

Q What was his response at each meeting?

A He would applaud.

Q At every meeting?

A Yes.

Q Did you see anyone else who was employed by Galaxy responding at this meeting?

A Yes.

Q Did you observe where the cheering or applauding would start when the figure of $60,000 was written on the blackboard?

A It would start in -- they would be all around because some of the people from Galaxy would be all over the room.

Q Did this figure or $60,000 influence you to join Galaxy?

A Yes.

Q Was anything else discussed by the speakers at these first opportunity meetings you attended before you joined?

A What was your question please?

Q Was anything else discussed by the company speakers at the opportunity meetings before you joined?

A Not that I remember.

Q Did you have any conversation with Mr. Shevack at these opportunity meetings?

A After the meeting was over he and I would stand in the lobby or the hallway and talk, yes.

Q Did you have a conversation with him at the first meeting that you attended at Hempstead Motor Inn?

MR. GOIDEL: Objection your Honor. I think it has already been testified to, any conversation that was follwing the meeting. So I take it your question is did you have a conversation with him at the meeting means after the meeting.

MS. MYSLIWIEC: I will rephrase the question.

Q You told us your conversation with Mr. Shevack. Can you tell us where it physic lly took place on the premises, your first conversation with Mr. Shevack following the first opportunity meeting?

A In the lobby of the Hempstead Motor Inn.

Q This was after the speakers had concluded their speeches, you were in the lobby of the Motor Inn and had a conversation with Mr. Shevack?

A Right.

Q Can you tell us what you discussed in that conversation with Mr. Shevack?

A He explained to me how I could earn $60,000 or more by investing into Galaxy, by envesting, and then Galaxy would recruit customers and sell to them over the radio and with paper ads.

And I would get a percentage of each customer that was brought into Galaxy.

Q Mr. Shevack said that Galaxy itself would recruit customers?

A Yes.

Q These customers would be given to you?

A Yes.

Q You would earn money on any food that these

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customers bought?

A Right.

Q Was this how Mr. Shevack explained the figure of $60,000?

A Yes.

Q Did he explain any other means of making money in Galaxy?

A By having -- to invite someone into an opportunity meeting and then they would possibly join and invest, and then I would get a percentage of their investment.

Q Did he explain how this was done?

(Cont'd on next page.)

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A He explained just have them come down to an opportunity meeting. That is all he explained then.

And they would have them join, get them to join.

Q Did he say what the importance was of getting them to come down to an opportunity meeting?

A Yes, to get them to come.

Q Did he explain what the importance was of getting them to come, or what would happen after they came to an opportunity meeting?

A He would talk to them and try to get them to invest into Galaxy.

Q But all you were supposed to do was to get them to come to the meetings?

A To come to the opportunity meeting, yes.

Q Did he explain what you were supposed to tell these people in order to get them to come to an opportunity meeting? This is Mr. Shevack now?

A Yes, he explained that I was only to invite them into the opportunity meeting, to make $60,000 or more just by inviting them in and they would explain how it was to be done.

Q Okay. Now aside from making money on the retail operations and getting people to invest in Galaxy

did you have any other conversations about the operation of Galaxy Foods with Mr. Shevack following this first opportunity meeting?

A Any other?

Q Yes, were any other topics discussed about Galaxy?

A If I invested would I be able to get my money back.

And he said, "Yes. It is a guaranteed investment."

Q This is what he explained?

A Yes.

Q Did he tell you what he meant by a guaranteed investment?

A Yes.

Q What did he say?

A He said if I invested and I didn't want to stay in Galaxy that Galaxy would buy back my franchise from me.

Q Did you find out about this buy back agreement from any other source besides Mr. Shevack?

A On a Sunday I -- at a step up meeting I heard that it would be a guaranteed investment, that they would buy back if you wanted to sell.

Q Do you remember who said this to you at the Sunday step up meeting?

A Arty Lee.

Q I would like to show you what has been previously marked in evidence as Plaintiff's Exhibit 14A, a newspaper advertisement in the New York Daily News, did you ever see a copy of this newspaper advertisement?

A Yes.

Q Did you ever discuss it with Mr. Shevack?

A No.

Q Did you ever discuss it with anyone in the company?

A No.

Q What did you understand by the reference to a guaranteed investment in Plaintiff's Exhibit 14A?

A That it was a guaranteed investment. If I didnt' want to stay in they would buy off my franchise.

Q Did you understand by the -- by guaranteed buy back agreement what portion of your investment was guaranteed?

A Not the full sum. But I would get at least 1500 dollars back, but not the full sum.

Q How much did you invest in Galaxy?

A $2,000.

Q Now, you testified as to your conversations with Mr. Shevack following the first opportunity meeting. You have also testified that Mr. Shevack was also present at the other opportunity meetings you attended. Did you have any further conversation with Mr. Shevack at the other opportunity meetings?

A Yes. He would always talk to me to try to get somebody to come down to an opportunity meeting, yes.

Q Did you have further conversations about the operation of Galaxy Foods before you joined Galaxy?

A I asked them when would they start delivering and he said approximately another month.

Q Now, can you fix a time when you had this conversation with Mr. Shevack?

A After a meeting at the Hempstead Holiday Inn.

Q Oh, so the next meeting after the Hempstead Inn was the Holiday Inn?

A Yes, right, the Holiday Inn.

Q How soon after the first meeting was this?

You testified the first meeting was approximately in June of '72?

A The next week I would say, approximately 7 days from the first one.

Q So it was also in Approximately June of 1972?

Mr. Shevack said they would start delivering in about a month?

A Yes, about.

Q Is that your testimony?

A Yes.

Q Did they in fact start food deliveries?

A No.

Q Did Mr. Shevack tell you any subsequent day when they would start delivering?

A Yes.

Q In personal conversations with you?

A Yes.

Q Do you recall when you had these personal conversations?

A After an opportunity meeting at the Holiday Inn.

Q And did you have subsequent conversations about the food program?

A After the third meeting that I had down at the wharehouse on Sunday he showed me around in the warehouse and then I decided I would invest.

Q Are you referring to a Sunday step up meeting?

A Yes, a Sunday step up meeting.

Q How many Sunday step up meetings did you

attend before you joined?

A I think one or two. I am not sure.

Q Do you know what a Sunday step up meeting is?

A Yes?

Q Can you describe what took place at some of the step up meetings?

A Yes. At the Sunday step up meeting every field manager and distirbutor would come down to a Sunday step up meeting and would get paid for having an investor to invest into Galaxy Foods.

Q Did anything else happen at a Sunday step up meeting?

A Yes. They would always have a guest to come up and hand out checks. And announce how much the checks are that someone would be getting for having investors to invest in Galaxy.

Q Would there be cheering and applause when these checks were handed out?

A Yes.

Q Would this influence you to join Galaxy?

MR. GOIDEL: Objection.

MR. MYSLIWIEC: I believe this calls for a conclusion in the witness' own mind as to why he purchased his investment in Galaxy Food.

MR. GOIDEL: Your Honor, he can testify to facts. He may also testify to what he did vis-a-vis the purchase.

But I do not think he has the right to characterize somebody else's statement in relation to his reacting to it. He can give the facts, and whatever inferences is to be drawn can be drawn.

THE COURT: Well, it is a difficult line to draw but I do feel it is essentially the type of answer that might well be regarded as self-serving.

You might inquire as to what attention he paid, if he paid any attention to it. Obviously he said he heard of it. Is that what he was listening to?

MS. MYSLIWIEC: All right, thank you. Next question.

Q Now, you say that quests would be asked to come up and read off the amount of money that individuals had made from getting people to invest in Galaxy? Is that correct?

A Yes.

Q Do you remember any of the specific circumstances where guests did this and any of the specific amounts that people made?

A Yes.

Q Can you tell us?

A $2500 down to $250, there was amounts to be handed out.

Q Do you know any of the investors who received checks for bringing people into Galaxy?

A Do I know any of the investors? Yes.

Q Who?

A Dave Roberts was one. Albert Jackson. That is all I know personally.

Q Did you have any conversation with them personally about their success in Galaxy?

A Yes.

(Cont'd on next page.)

Q When the existing investors that were picking up checks were up in the front of the room, did they say anything when they picked up their checks?

A Yes, they would say that they have only been in Galaxy just a short period of time and how much money they have earned in this period of time since with Galaxy.

Q Was there any response from the audience when they were saying how short a time they were with Galaxy and how much money they earned?

A There would be cheering and applauding from the audience.

Q Did you cheer or applaud?

A No.

Q The 5 checks handed out to existing investors, was there anything else that transpired?

A They would ask, was there any money in the room. He would say, "I smell money in the room."

Q What would happen?

A " Would you like to bring it up front now?"

Q Did you observe any people come up and bring their money up to Galaxy?

A Yes.

Q To join Galaxy?

A Yes.

Q Was there any response from the audience when they brought this money up?

A There would be cheering.

Q Did there come a time at the Sunday step-up meeting when all new guests were asked to stand?

A Yes.

Q What happened?

A They were asked, how many of them would like to become an investor in Galaxy earning $60,000 or more a year.

Q Was anything else said?

(No response.)

Q Or was anything else asked of the new guests?

A How many are ready to join today. When are you going to join?

Q Was anything else asked?

A No.

Q Did people join Galaxy at the time?

A Yes.

Q What was the response from the audience when people joined Galaxy?

A They cheered and applauded.

Q For both the field managers and distributors?

A Yes.

Q After you joined Galaxy, Mr. Simmons, did you attend opportunity meetings and Sunday step-up meetings?

A Yes.

Q About how many of each?

A Step-up meetings, approximately 3 or 4, maybe 5.

Q And opportunity meetings?

A Yes.

Q Do you recallhow many of them?

A About 3 or 4, I would say.

Q Did the same people --

THE COURT: Did I understand this was after he had joined?

MR. MYSLIWIEC: Yes, the previous testimony has been before he joined Galaxy.

Q You testified that certain executives spoke at Galaxy meetings, did the same people speak at the meetings after you joined as before?

A Yes.

Q Were the meetings run in the same way?

A Yes.

Q There was cheering and applauding at every

meeting you attended?

A Yes.

Q I would like to show you what has been marked in evidence as Plaintiff's exhibit 3 for identification.

Have you ever seen a copy of that before?

A Yes.

Q Do you know whether or not this was used by speakers at the Galaxy meeting?

A Yes.

Q How do you know that?

A I have one. I read it over. The same wording was used.

Q Where did you get your copy?

A Galaxy.

Q How did you get your copy?

A Purchased it.

Q Did you know you had to buy your information from Galaxy Foods before you joined?

A No.

Q Were you required to purchase anything from Galaxy?

MR. GOIDEL: Objection to the use of the word "require." There is no testimony that anybody had to do anything.

Simmons-direct

THE COURT: Sustained.

Q Were you required to purchase any literature from Galaxy Food?

A Yes, I was required to buy business cards, identification cards, and pamphlets of business manuals.

Q Were the business manuals like Plaintiff's exhibit 3?

A Yes.

Q Were you told before you joined that you would be required to purchase business cards?

A No.

Q Or any literature from Galaxy?

A No.

Q When you joined Galaxy, was there any food delivery program in operation at Galaxy?

A No.

Q Before you joined, did you know when there was going to be a food operation by Galaxy?

A I did not know.

Q Did you know whether Galaxy has ever delivered food?

A No.

Q You testified at the first opportunity meeting it was explained to you you could earn commissions on the

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sale of food. Did there come a time when you found out you would not be able to earn commissions on the sale of food?

A Yes, I wouldn't be unless I wanted to purchase my own customers. Get my own customers.

Q That was not your previous understanding?

A No.

Q What was your previous understanding?

A Galaxy would recruit customers and sell them -- sell to them, and then I would get a commission from the purchasing.

Q When did you find out they would not distribute customers and you would not get commissions?

A After approximately 6 months. Approximately 3 weeks or so.

Q After you joined Galaxy?

A Yes.

Q Who told you this? And when did you find this out?

A I found this out at a members' meeting on a Tuesday night at the warehouse in Brooklyn.

Q What is a members' meeting?

A A private meeting.

MR. GOIDEL: Canthe witness please speak up,

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your Honor?

THE COURT: Perhaps if you pull that down a little.

A At a meeting after I had joined on a Tuesday night. The field managers and distributors were invited down and we were told we had to get our own customers to earn a percentage on whatever they bought.

Q This was at a meeting where no new guests were invited?

A Yes.

THE COURT: Did I understand this was 6 months after you joined?

THE WITNESS: 3 or 4 weeks.

THE COURT: I thought I heard him say 6 months. And then he corrected it.

Q At this meeting for members only, who spoke at the meeting from Galaxy?

A Artie Lee.

Q Did anyone else speak at the meeting?

A Steven Roth, Charlie Hurwitz.

Q Was anything else discussed about the food operation of Galaxy at this meeting for members only?

A We had to get people to invest to have the necessary money to start the deliveries.

Q Were you ever told before you joined Galaxy there would be no food delivery program without continued investments by new franchise purchasers?

A No.

Q This was the first time you were told this?

A Yes.

Q Were you in Galaxy Foods when they did start to deliver food?

A Yes.

Q When you joined Galaxy, did you know what the scope of the retail delivery program in Galaxy was supposed to be?

A Excuse me?

Q When you joined Galaxy, did you know where they were supposed to deliver food?

A Brooklyn, Manhattan, Upstate New York and Long Island.

Q Who told you this?

A This was told to me by Artie Shevack.

Q Do you recall when?

A Before I joined.

Q Was it following an opportunity meeting?

A Yes.

Q In a private conversation?

A Yes.

Q Did you subsequently learn this was not the area?

A Yes, and only a small area around 303 Stanley Avenue in Brooklyn.

Q That is where the warehouse is located?

A Yes.

Q Who told you that the food delivery would only be in a certain mile radius around the warehouse?

A I learned this at a step-up meeting on Sunday.

Q Was this after you joined or before?

A After I joined.

Q Can you fix the month?

A July, possibly, '72.

Q Did you have a conversation with Mr. Shevack about the change in delivery area?

A I didn't question him because after he didn't spend too much time with you, after I joined.

Q Did you attend any training sessions in Galaxy, Mr. Simmons?

A Yes.

Q When?

A Approximately August, September of '72.

Q Do you remember where they were held?

A 303 Stanley Avenue.

Q At the warehouse?

A Yes.

Q How many sessions did you attend?

A I came 5 nights.

Q Were you required to attend training sessions?

A Yes.

Q Were you told before you joined Galaxy that you were going to be required to attend training sessions?

A No.

Q Who were your instructors at the training sessions?

A He was a --

Q If you recall.

A A black guy. A young guy. I don't recall his name.

THE COURT: Does the name Beck sound familiar?

THE WITNESS: Pardon me?

THE COURT: Does the name Beck sound familiar?

THE WITNESS: No.

Q Do you recall whether or not it was Thadius Stenson?

A Yes.

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Simmons-direct

Q Did you receive training in the franchise and retail operation of Galaxy Food?

A Yes.

Q At the training sessions, I am referring to the training sessions?

A Yes.

Q You attended training sessions in both aspects?

A Yes, sir.

Q Are you familiar with the word prospecting?

A Yes.

Q Do you know what it means in relation to Galaxy?

A Yes.

Q Can you explain what it means in relation to Galaxy?

A To approach someone and ask him to come down and learn how they can make $60,000 or more.

Q Was this explained to you at the training sessions?

A Yes.

Q Was it explained to you how to approach people?

A Yes, sir.

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Q Can you detail for us what you were told at the training sessions?

MR. GOIDEL: Objection, unless he identies who it is.

Q Were there any instructors besides Mr. Stanson?

A The only instructor was Mr. Stenson.

Q Can you tell us what you were --

A I'm sorry, there was another shorter black guy who was with Stenson at the training sessions. There were two of them. I don't remember his name either.

Q Can you tell us what you were told at the training sessions about approaching strangers to get them to invest in Galaxy Foods?

A (No response.)

Q Were there any demonstrations at the training sessions?

A He would explain how to approach and explain it. I never approached anyone. I don't do that. I am not one to approach or explain.

Q But they did demonstrate at the training session how you should do that?

A Yes.

Q Can you explain how they demonstrated it?

A He told us to stand up and talk to someone as

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if we didn't know the person, and try to invite them to the opportunity meeting right there in the session.

Q Do you remember the words they used in the demonstrations?

A Not that I can recall.

Q Were you instructed about how much information to give people in telling them about Galaxy?

A Yes.

Q How much information were you supposed to give people?

A Not totell them you had to invest. Invite them to an opportunity meeting, and it would be explained in the opportunity meeting how they could earn $60,000.

Q Were you supposed to tell them they could earn $60,000?

A Yes, maybe more.

Q But you were not supposed to tell them what it cost?

A Right.

Q Was it explained to you at the training session, the importance of getting people to come down to the meeting?

A Yes.

Q What did they say in that regard at the training sessions?

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Simmons-direct

A If you get someone to come down, we would get them to join.

Q What did you understand your role to be in convincing people to join Galaxy?

MR. GOIDEL: Objection, your Honor. He already testified. This now calls for a conclusion as to what he thinks somebody else told him to do. He can testify to what he was told and what he did.

MR. MYSLIWIEC: I think it is a legitimate question. I guess, if I may give an example, he was going to school and they were instructing him in the type of technique to follow in approaching people. What he was supposed to tell them, and I am sure there were conclusions given at the school and the training instructors told these people what to do. I would like to find out from the training session what he was told to do.

MR. GOIDEL: I have no objection if that is the question, what were you told to do.

THE COURT: I would allow that.

Q Were you told what your role was in convincing people to join Galaxy?

A Tell them you could make a lot of money by

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joining Galaxy, yes.

Q Were you told at the training sessions you could rely on the efforts of speakers at the meetings and efforts of other people to convince people to join?

A Yes. I was told this at the training session, yes.

Q Now, Mr. Simmons, you said you invested $2,000 to purchase your franchise in Galaxy?

A Yes.

Q Did you have the necessary funds to invest in Galaxy?

A No.

Q Who sponsored you into Galaxy?

A Artie Shevack.

(continued next page.)

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Simmons-direct

Q Did you discuss with Mr. Shevack the fact you didn't have the necessary funds to invest?

A Yes.

Q Do you remember when you discussed this with him?

A Approximately June of '72.

Q Do you recall where?

A Yes, at a meeting -- after a meeting at the Holiday Inn.

Q So the Holiday Inn was the second and third meeting?

A Yes.

Q What did you say to Mr. Shevack at the Holiday Inn before you joined the Galaxy?

A I said to him I don't have the money to invest so he said, how is your credit, and I said I have good credit.

Q Did you have any other discussions with him?

A We will take out a loan and you can invest by taking out a loan.

Q Did you have any response to that?

A I said okay.

Q Did Mr. Shevack give you a loan application?

A Yes.

Q How did you get the loan application? What was the procedure that he followed?

A He said let's go to a finance company, I will pick you up lunchtime tomorrow. We will borrow the money.

I said I would rather not go to a finance company, I would rather go to a bank so the interest is lower.

Q Did you subsequently make application for a loan at a bank?

A Mr. Shevack picked me up with his car and took me to the Bank of North America. He went inside and brought out an application and filled it out and then I signed it and took it back inside.

Q Let's backtrack a little. You went into the bank together with Shevack?

A Yes.

Q You went in his car?

A Yes.

Q And who chose the bank?

A I chose the bank because I was dealing with the bank with the checking account and savings account.

Q You went to the bank with Mr. Shevack and he went in and got the application?

Yes.

Q Mr. Shevack came back to your car?

A His car. And he filled it out and gave it to me.

Q He filled out the loan application?

A Yes.

Q Did you have any conversations while he was filling out the loan application?

A Peter was with him and was talking to me.

Q Right.

What conversation did you have?

A He was telling me it was a good investment and I would be able to make my money back in two or three weeks.

Q Did you have any conversation with Mr. Shevack in his car while he was filling out the loan application?

A He said to me I am going to put on the application that you are going to buy some furniture for the apartment. We can't put you are going to invest in business.

Q Did he say why you can't put down you are going to invest in business with the money?

A No, he did not.

Q Did you mention the word furniture to him

before he --

A No, I didn't give him no information on what to put on the application at all. Only my name and address which he already knew, and where I worked.

Q What did you do with the loan application after Mr. Shevack filled it out?

A I took it inside the bank and submitted it to the manager.

Q You signed the application?

A Yes.

Q Were you working at the time you applied for a loan?

A Yes.

Q Did you subsequently receive a loan from the bank?

A Yes.

Q Can you tell us how you received the money from the bank?

A I received the money by Mr. Shevack coming over to my job, picking me up at lunchtime one day, taking me over to the bank again, and I got the check which was $2009.

Q Do you remember when you received the check from the bank?

A July of '72. I don't remember the exact date.

Q Early in July?

A I don't remember whether it was early, but it was in July. I was on vacation at the time.

Q What did you do with the check after you picked it up from the bank?

A Signed it over to Mr. Shevack.

Q Did you have any discussion with Mr. Shevack at that time about what he was going to do with the check?

A I asked him what he was going to do with the check. He said, take it back to the warehouse and bring your application signed with your change tomorrow at an opportunity meeting.

Q Did you subsequently see Mr. Shevack?

A Yes.

Q At a meeting?

A Yes.

Q Did he give you a copy of the contract?

A No.

Q Did he give you your change?

A No.

Q Did you have any conversation with Mr. Shevack about getting your copy of the contract or your change?

A Yes.

Q What did you say to him and what did he say to you?

A I asked him where was my contract and change. He said it was still in the office, and when I came over to the step-up meeting on Sunday, I would have it.

Q Did you subsequently see Mr. Shevack?

A He wasn't at that meeting.

Q Did you have any further conversations with Mr. Shevack about getting a copy of the contract?

A Yes. The next Tuesday he phoned me and he met me at the Hempstead Holiday Inn at an opportunity meeting.

Q Did you ever get your copy of the contract?

A No.

Q Did Mr. Shevack tell you that it was wrong to give false information on a loan application when he was filling out the application?

A No.

Q Have you paid off the loan?

A Except for one payment.

Q Did you ever make any money in Galaxy?

A (No response.)

Q Mr. Simmons?

A I got -- I got back $1,000.

Q Mr. Simmons, did you attend any meetings in March of 1973 held by Galaxy Foods?

A 1973?

Q Yes.

A I don't remember the month.

After Galaxy didn't deliver, I figured it was a loss and I didn't spend any more time. I was working two jobs at the time. I didn't want to lose any more with them after they didn't deliver.

Q Did you attend any meetings in 1973 where Artie Lee spoke about the financial condition of Galaxy?

A Yes, I remember that.

Q Was it a special meeting that you remember it?

A Yes.

Q Can you tell us what ARtie Lee said? First of all, do you remember when the meeting was in 1973?

A Between Monday and Friday. The night during the -- only members were supposed to be there. No guests were allowed.

Q Do you remember when it was held?

A (No response.)

Q What part of 1973?

A Early part of '73. I think it was snowing.

Q Can you tell us what did Artie Lee say at this meeting for members only?

A He said we would have to invest our own -- get our own customers and he needed more money, he was asking people to get more money to have the necessary funds to buy food and trucks.

Q Did he say what would happen if people didn't loan money to Galaxy?

A He said they wouldn't be able to deliver.

Q The food operation would stop?

A Yes.

Q Mr. Simmons, did you know before you joined Galaxy that they would not be able to continue food operations unless they continued to get people to invest in the company or give money to the company?

A No.

Q Did you lend any money to Galaxy?

A No.

MR. GOIDEL: I'm sorry, I didn't hear.

Q Did you lend any money to Galaxy?

A No.

Q Did Artie Lee say anything else about the financial condition of Galaxy at that meeting?

A No.

Q Did he say how much money the company needed, if you recall?

A He didn't say how much they needed. He said -- I don't remember. He said they needed money. The exact amount I don't remember.

Q Before you joined Galaxy, Mr. Simmons, were you ever told that certain members of management or officers of Galaxy had received franchises without paying cash for their franchises?

A No.

Q Did you ever see the books and records of Galaxy Foods?

A No.

Q Do you have any voice in the management of Galaxy Foods?

A No.

Q Can you tell us what the status of your investment is now, Mr. Simmons?

A In what respect?

Q Aside from the thousand dollars that you testified that you made from Galaxy Food, do you think you' ever going to get your money back from Galaxy Foods?

A No.

MR. MYSLIWIEC: I have no further questions.

Wait, I am sorry.

Q Mr. Simmons, one last question :

Were you ever told that certain members of the management or officers of Galaxy were receiving override commissions on all the new people that were brought into Galaxy?

A (No response.)

Q In other words, if you sponsored a person into Galaxy, you would get a commission, but certain members of the management would also get a commission ?

A Yes.

Q You understood that?

A Yes.

Q When were you told this?

A After I had joined the meeting.

Q How did you come to find this out?

A When they tried to get me to invest in for a distributorship. They told me after I invested, I could recruit field managers, and then I would get a percentage --

Q I don't think you understood my question :

Were you ever told before or after you joined Galaxy that for every person you brought into the company, Artie Lee would also get a commission?

A No.

Q Were you ever told that other members of the management of Galaxy were getting commissions for any person that you brought into the company?

A No.

MR. MYSLIWIEC: I have no further questions.

CROSS EXAMINATION

BY MR. GOIDEL:

Q How big an investment did you make?

A $2,000.

Q That was for a field manager's position?

A Yes.

Q You say you got back $1,000?

A Yes.

Q What does that $1,000 represent?

A I was getting part of my money back.

Q How, for doing anything?

A I introduced two people to Artie Shevack and he, in turn, got them to invest in Galaxy Foods.

Q You received a commission following the purchase by these individuals of a franchise?

A Yes.

Q From the fact that you received $1,000, I assume that your commission was $500 per individual?

A Right.

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Q Sir, you identified another copy of this, if I could have the original --

THE COURT: Isn't that in evidence?

MR. GOIDEL: Yes, sir, But I had my copy.

MR. MYSLIWIEC: It was previously marked in evidence as plaintiff's exhibit 3.

THE COURT: I thought you said an exhibit for identification.

MR. MYSLIWIEC: I said it has been marked for identification as exhibit 3 but really, it has been marked in evidence.

Q Let me dwell a moment longer on these commissions that you received. Do you know the names of the people who you introduced to Galaxy?

A Yes.

Q Who were they?

A David Roberts and Albert Jackson.

Q Do you know whether either of them made a loan to secure the money for the purpose of purchasing a franchise?

A I don't know. Albert Jackson sold one of his trucks to Galaxy as an investment.

Q Did you read that loan application before it was submitted to the bank?

A Not really, no. I only saw he had wrote on it to purchase furniture.

Q Did you look at it or did you assume that was written or what?

A He told me it was his writing on it.

Q Answer my question: Did you read the application?

A No.

Q After you signed it, when you carried it into the bank, did you read it then?

A No, I didn't read it. I didn't take time to read it.

Q When you presented it at the bank, did you give it to a loan officer or some gentleman or lady sitting there?

A Yes.

Q Did you sit down and spend any time with that individual?

A No.

Q Did they ask you any questions?

A Yes, he asked me a few questions, I think. My address, my age, personal information.

Q Did he ask you the purpose of a loan?

A Yes.

Q What did you say?

A He didn't ask me the purpose of the loan, he looked at the application. He said, "You are going to buy new furniture?"

I said, "Yes."

Q Now, sir, you were asked the question previously by counsel for the plaintiff -- withdrawn.

Sir, did you believe it to be wrong to say you were going to purchase furniture with the proceeds of a loan, if, at that time it was your intention not to use the proceeds for that purpose?

A No.

(continued next page.)

Q You did not believe it to be wrong?

MS. MYSLIWIEC: Objection, your Honor. That was not the question. The question was, were you told by Mr. Shevack --

MR. GOIDEL: No, I just framed my own question. I withdrew the previous question.

THE COURT: No, he asked whether this witness believed it to be --

MR. GOIDEL: Would you read back the question and answer, please?

(record read.)

Q You did not believe it to be wrong?

THE COURT: He said, no, Mr. Goidel. We are just prolonging things with repeating.

MR. GOIDEL: All right.

Q Now, sir, did you ever advise anybody to do the same thing?

A No.

Q Did you suggest it to him?

A No.

Q Now, you keep saying $60,000 was the figure. $60,000 or more was the figure utilized at these opportunity meetings; is that correct?

A Yes.

Q Any other figures ever used?

A There were different figures used, yes.

Q Lesser figures?

A Lesser figures, more figures. It was sometime --

Q Higher, lower?

A Yes. $90,000 was used occasionally.

Q How about lower figures?

A Possibly $3,600 might have been used.

Q How about $25?

A $25?

Q Yes.

A I don't recall $25.

Q $150? Was that figure ever used?

A Not that I can remember.

Q $2500, was that figure ever used?

A I can't remember.

Q Now, sir, you did identify this book that is Plaintiff's Exhibit 3 and you did acknowledge that you saw that previously?

A I have one.

Q You have one?

A Yes.

Q When is the first time that you ever saw a

a copy of this?

A In '72, I don't remember.

Q '72?

A '72.

Q Sir, I show you Plaintiff's Exhibit 5. Did you ever see this?

A Similar. But it had a different backing.

Q Different backing?

A Yes, it was a different --

Q Color?

A Yes.

Q Do you know what this book is, Plaintiff's Exhibit 5?

A I have one the same as that one. Mine. Mine is --

Q All right.

MS. MYSLIWIEC: This is Exhibit 4.

Q I will show you --

THE COURT: Has that been marked?

MS. MYSLIWIEC: Marked in evidence.

MR. GOIDEL; Yes.

Q Is this the one that you were talking about?

A Yes.

Q As having been shown to you at sometime?

A I have it.

Q You have it.

When did you first see that?

A In '72. This one might have been '73. But this one I received before I got this one. This one is first.

Q Okay.

MS. MYSLIWIEC: Could you just identify it by number for the record because he is saying this one and that one.

MR. GOIDEL: He is saying Plaintiff's Exhibit 4 -- he is saying that Plaintiff's Exhibit 4 was in 1971 and Plaintiff's Exhibit 3 perhaps was in '72 or '73.

THE WITNESS: Yes.

MS. MYSLIWIEC: I didn't hear him say '71.

MR. GOIDEL: I am sorry. '72. And Plaintiff's Exhibit 3, in '72 or '73.

THE WITNESS: Late 2 or 3, yes.

MR. GOIDEL: Okay.

Q Now, would you again repeat for us what was said to you at that first opportunity meeting and repeat it as closely as possible to what was actually said.

A What was said to me?

Q Yes.

A That after the opportunity meeting was said that you could make $60,000 or more be investing in Galaxy, and Galaxy would recruit customers and they would deliver and I would get a percentage of the food that was sold to the customer and delivered to the customer.

Q Did they say anything about you acquiring salesmen to sell to customers?

A Requiring salesmen?

Q Acquiring, getting salesmen to sell to the public, to solicit orders for food.

A At the first meeting, no.

Q Were you there at the beginning of the meeting?

A No. I wasn't there at the beginning of the first meeting, no.

That is, the meeting that you say you went to with Mr. Shevack after he had stopped to ask instructions of you as to how to get to a particular location; is that correct?

A Yes.

Q When you walked in, you walked in to an already existing meeting, a meeting that was already in progress?

A Yes.

Q And was the speaker -- who was the speaker at that time when you walked in?

A Ralph Martin.

Q Mr. Martin.

Now, sir, would you kindly look through this book and as closely as possible, if it's at all possible, select that portion of the script contained in this book that Mr. Martin was discussing or speaking or repeating as you walked in.

A The part that he was discussing was on the board with the figures.

Q On the board with the figures?

A Yes.

Q Now, we heard testimony, sir, that they followed a script. Did you ever hear that expression?

A A script?

Q A script. They followed an outline.

A Yes. I would say they followed an outline.

Q What we have referred to as Plaintiff's Exhibit 4, would that be a copy of the outline of script that was followed?

A Yes.

MS. MYSLIWIEC: Could you hold it up, please?

MR. GOIDEL: Yes.

Q And your answer was, yes sir?

A Yes.

Q All right. Now, would you tell me at what portion of this script were they when you first entered the meeting?

A What portion? I don't remember exactly what portion.

Q You say they were talking about figures. And I call your attention to the last page.

A I don't remember seeing this.

Q Before Part II.

THE COURT: When you pointed to this, you pointed to what portion of the page?

MR. GOIDEL: That is an outline, your Honor, of the figures and percentages that appear on the part immediately preceding the page marked Part II.

Q Were they talking about this at the time?

A To my best memory, yes.

Q You said a moment ago-- you said, yes, I did see this. Do you mean you saw this in some form, be on the blackboard or be it in the book?

A I have seen this being done on the board.

Q On the board?

A Some form similar to this anyway.

Q Did you see this that first day during that

first day that you entered?

MS. MYSLIWIEC: By "this" are you referring to the entire page, Mr. Goidel, or just some particular portion?

MR. GOIDEL: That page --

Q That page -- those figures were put up on a blackboard?

A I don't remember figure for figure, no. But I saw them. They were having discussions on the board. What exactly was on the board, I don't know.

Q You did remember the figure of $60,000?

A Because that occurred many a time.

Q Many a time. Well, would -- did the figure 25 occur many times?

MS. MYSLIWIEC: Objection. I don't think this question is clear. Now, the $60,000 figure was the bottom line figure.

Is Mr. Goidel asking if the figure of 250 was a bottom line figure at anytime or is he asking if that figure appeared appeared anywhere on the board?

MR. GOIDEL: I never used the words bottom line figure. I simply referred to $60,000 and now I am referring to the figure 25 dollars.

THE WITNESS: There was a whole bunch of

numbers, a whole bunch of figures on the board, sir, that I don't remember.

But the bottom line was $60,000 or more.

Q What does the bottom line mean?

A What does the bottom line mean?

Q Yes.

A It means at the end of whatever they were going to figure it down to, that's what you would be getting.

Q What period of time was that?

A What period of time?

Q Yes. I assume from the -- from what you are saying, the bottom line refers to some figure that could be eanred over a period of time; is that correct?

A Yes.

Q Over what period of time?

A Over a year of Galaxy Foods sales, that you would earn $60,000.

Q After a year?

A Yes.

Q After a year of selling what?

A After a year of Galaxy delivering food, not selling.

Q Of delivering and selling food?

A Yes.

Q And these figures that appear on this page, you say you have seen many times in one form or another?

A Yes.

Q Now, can you explain to me what those figures represent to you?

A Can I explain what the figures --

Q What they mean to you. Take your time, sir.

A This one -- the first set of figures is regular multiplication and 5 per cent is a hundred and twenty-five dollars of --

Q Of what, sir?

A Of a hundred dollars.

Q Yes. What does the hundred dollars refer to?

A I suppose a customer buying a hundred dollars of food.

Q Fine. And then if you had two salesmen selling X amount of food and your commissions were some percentage that you would earn so much and so much depending upon the amount of food sold and the number of salesmen that you had; isn't that correct?

MS. MYSLIWIEC: Objection, your Honor. There is no testimony that the witness ever mentioned the use of salesmen or understood the board to representing

figures in connection with salesmen.

MR. GOIDEL: Well, I am asking him what this means to him and I am now asking him whether what I just said is what this means to him.

THE COURT: Well, perhaps you ought to have it read back, what you just said. Let's hear that a minute.

(Record read.)

THE WITNESS: I don't understand clearly what you're saying either, sir.

Q All right, sir.

Did you ever try to explain this particular page that we have been referring to to anyone else?

A No.

Q You never did?

A Never.

Q Did anybody ever try to explain this page to you?

A This page? In any manner, no.

Q In this manner.

A Except what was on the board.

Q What was on the board?

A Personally? Somebody reproduced this on the blackboard, yes.

Q And explained it to the audience?

A Yes.

Q Were you in the audience at the time that the explanation was given?

A Yes.

Q On how many different occasions do you recall being in the room with this having been written on the blackboard and an explanation being given to the audience?

A How many times I recall being in the audience?

Q Yes.

A Approximately two or three.

Q And does that include the first meeting that you walked in on after you and Mr. Shevack had driven together to the hotel?

A That one. It did not include that one. The meeting -- it included the meeting that was partially over, mostly over when I got there.

Q Okay. But you do recall the figure of $60,000 being on the blackboard at that time?

A Yes.

Q What other figures were on the blackboard at that time?

A I don't remember.

Q Could it have been these figures?

A Possibly.

MS. MYSLIWIEC: Objection.

THE COURT: Possibly, he says.

Q Okay. Now, you say you had a conversation with Mr. Shevack following --

A Yes.

Q --following this?

A Yes.

Q Is that correct?

A Yes.

Q How much time did you spend with Mr. Shevack?

A Approximately 5, 10 minutes.

Q Did you discuss things other than $60,000?

A We talked of earning 30. Mr. Shevack said any amount of money would be better because he's driving an Eldorado, and he said, "How do you think I got this?"

So I said, "You know -- and I was driving an old '64 Chevvy.

He said, "You invest and you don't have to drive a wreck like this anymore."

So I said, "It looks good."

Q You started to use a figure of 30. 30 what?

A 30,000 maybe.

Q I thought you used a figure below 30,000.

A I don't remember everything that was said.

Q Well, sir --

A At no meeting or no place because I was really intersted in making big money when I invested.

Q Okay. I appreciate the fact that it's difficult sometimes to remember so far back. But there are certain things that you have remembered.

You have remembered the use of the figure of 60,000; and now upon reflection you have remembered some other figures. And you do remember Mr. Shevack driving an Eldorado.

Q And you were driving a '64 Chevvy?

A '64.

Q So we are beginning to remember things.

Now, I am asking you very simply, do you remember Mr. Shevack using any other figures besides $60,000, 30,000? Anything else?

A Not that I can remember.

Q Now, can you tell me what was said then during this five or ten minute period that you and Mr. Shevack are purported to have had a conversation?

A He was trying to get me tocome into the city the next night to a meeting that they were going to ahve, an opportunity meeting, which I refused to come in because

I didn't want to take off and drive in.

Q Okay. Now, sir, you were told not to say too much, but to get the people down to the meeting?

A True.

Q Do you know whether Mr. Shevack was instructed to do the same thing as relating to the people who he was attempting to invite to these meetings.

MS. MYSLIWIEC: Objection.

MR. GOIDEL: I am asking if he knows.

MR. LERNER: It would still be hearsay, asking what some person told Mr. Shevack who told him --

THE COURT: Let me hear that question.

(Record read.)

THE COURT: Do you know that?

THE WITNESS: I don't remember.

(Cont'd on next page.)

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1 Simmons-cross

Q Well, he did that with you, sir, did he not. He just told you enough towhet your appetite, to get you down to the meeting; isn't that true?

A True.

Q And that's in turn what you did when you met with people?

A No.

Q True?

A No.

Q What did you tell the people?

A I told the people that it was possible that they could make 60,000. I didn't -- and then I introduced them to Shevack.

Q So you used the same $60,000 figure that Mr. Shevack used?

A Yes.

Q Now, sir, we started off -- by the way -- withdraw that.

Did you ever actually read Plaintiff's Exhibit 3?

A Actually read it carefully, no. I never read this one carefully myself.

Q How about Plaintiff's Exhibit 4?

A I never took time to read either one of them, no, but I looked through them.

Q How about the contract that you signed?

A No.

Q You didn't read that either?

A No.

MISS MYSLIWIEC: Objection. What contract?

MR. GOIDEL: I will withdraw that question.

MISS MISLIWIEC: There is no testimony that he signed a contract.

Q Did you sign a contract?

A Yes, I signed a contract.

Q Did you read it?

A No. Not prior to signing it. After -- later I got the contract from Galaxy that was never signed by anyone and then I read it.

THE COURT: YOu mean you got a form?

THE WITNESS: Yes. Same as I signed.

Q Were you ever told, sir, that within X number o f days of signing the contract you could get your money back?

A Yes.

Q What period of time was that?

A I don't remember the exact date.

Q After signing the contract and after depositing your money, did you request your money back?

A No.

Q Now, sir, did you ever attempt to sell your own franchise?

A No.

Q Did you ever attempt to have Galaxy Foods buy back that which you had purchased from it?

A No.

Q Now, sir, some mention has been made of the fact that you have an 11th grade education.

A Yes.

Q But yet you have a rather responsible position, do you not?

A Rather responsible position?

Q Yes. You are a prototype technician.

A Yes.

Q So, I take it, that, too, requires some learning, some ability, true?

A True.

Q Special training?

A Some special training.

Q Where did you receive that special training?

A On the job.

Q Now, sir, have you ever had difficulty with English, with our language?

A Difficulty in what respect, sir?

Q Reading, speaking.

A I don't read as good as I --

Q But you speak very well.

A I can speak English, yes.

Q Is there any portion of that -- this pamphlet, that you cannot read and understand?

A It will take me a while. I can read it, but it will take me a long time to --

Q Fine. Now, I think you also said that you did not clap at these meetings.

A True.

Q Everybody else clapped, but you did not?

A Right.

MR. LERNER: Objection. He did not testify that everybody clapped.

Q Did everyone else to your knowledge clap?

A To my knowledge, I don't know.

Q Have you heard a great many people clapping?

A There were many people.

Q But you ever clapped?

A I never.

Q How about when you had guests at the meeting to whom you were trying to sell a franchise?

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A No.

Q You didn't clap then either?

A No.

Q Did you smile?

A I don't remember.

Q Did you ever do anything than just sit there? Didn't you try to inspire your prospective purchasers to purchase?

MISS MYSLIWIEC: Objection. Argumentative.

MR. GOIDEL: That's not argumentative. It's cross-examination.

Q Didn't you ever try to induce them --

THE COURT: Wait a minute.

MR. GOIDEL: I am sorry.

THE COURT: I think you are getting ahead of yourself. He has indicated that he introduced two friends of his, as I understand it.

THE WITNESS: Right.

THE COURT: To Mr. Shevack.

And did you attend meetings with those friends?

THE WITNESS: Only a Step-Up Meeting I attended with one of them. The other one I did not attend any meeting with.

THE COURT: I see. You went to a Step-Up

Meeting with one?

THE WITNESS: Yes.

THE COURT: And did you talk to him at the meeting about what was going on?

THE WITNESS: No.

THE COURT: Was he present with both of you at the time?

THE WITNESS: Yes.

THE COURT: Did he do the talking?

THE WITNESS: Yes.

Q But now we are talking about while in attendance with this friend, did you do anything to inspire your friend to purchase?

A No. Before he joined, no. Even after, no. I never expired or whatever -- inspired.

Q Well now, how about business cards, sir? You purchased business cards?

A And they are all -- I have the box home. And you can count them. Maybe five is missing.

Q Sir, I believe it. I believe it.

But you did buy the business cards.

A I had money lost already, invested. I had to do something and --

Q What did you intend to do with the business

card that you purchased?

MR. LERNER: Objection. He said he was required to buy the business cards.

MR. GOIDEL: I understand what he said. Now I am asking him.

Q What did you intend to do with these cards?

A If Galaxy ever had delivered and started to do business, I expected to give them out and use them, but --

Q In what way were you going to use them?

THE COURT: Well, he explained that. He said if they ever started delivering, he'd go out and use them.

MR. GOIDEL: And my question, your Honor, is how would he use them.

THE WITNESS: By giving them to people and telling them about Galaxy.

Q Fine. And that would be in connection with the retailing of food; is that correct?

A Right.

Q O.K. You didn't take those cards or buy those cards for the purpose of giving them out in connection with the sale of franchises?

A No.

Q O.K. Now, the business manual, you say you

were required to buy, true?

If that's the business manual, sir, you say you were required to buy?

A Yes.

Q And buy the business manual.

A And the notebook that she's got there.

Q And the notebook, which Is Plaintiff's Exhibit 11; is that correct?

A Yes.

Q O.K. Now, I want you to tell us what was said to you at the time that you were required to buy them.

A They said that if you want these, you've got to buy them. They wouldn't give them to you. They were there for you, but you had to buy them.

Q That's what was said.

A And to -- you know, you had to buy them. Otherwise you wouldn't know what was happening except by listening to what someone said.

Q That's what you mean by required to buy?

A Yes.

Q Did you buy this from Mr. Shevack, Exhibit 11?

A I bought it from Mark Glasser in the warehouse.

Q How about Plaintiff's Exhibit 4?

A Mark Glasser in the warehouse.

Q Plaintiff's Exhibit 3?

A Same.

Q Now, you did mention that you were investing $2,000 and that your check was for $2,009; is that correct?

A Yes.

Q Now, I know it's only $9, but did you ever see that $9?

A No.

Q Never was given back to you?

A No.

Q Did you ever check with Galaxy to find out how much money had been deposited by them?

A I asked about the $9.

Q Whom did you ask?

A Arthur Shevack.

He said, "I have the $9. I will give it to you."

Q But he never did?

A Right.

Q Now, the check was made payable to whom?

A To me.

Q And you in turn endorsed it in blank. You know what a blank endorsement is? A blank endorsement, sir, is simply signing your name on the back of it.

A That's what I did.

Q You didn't put anyone's name on it that said, pay to the order of so and so?

A No.

Q You merely signed it and gave it to Mr. Shevack together with the application and that's the last you saw of it?

A Right.

Q At some time in the future you did receive a copy of the contract?

A A copy of the contract I had signed?

Q A copy of the contract either signed by an officer of Galaxy --

A It was not signed, no. It was an open --

Q Copy?

A Yes.

Q Unsigned copy?

A Right.

Q O.K.

A Which I had to purchase also to get and which I paid 25 cents for.

Q 25 cents for the copy?

A It was a complete contract. If I had wanted to get someone to invest, it was a contract for me to have him fill out and then bring it in.

Q And they charged you 25 cents for that?

A Yes.

Q O.K. You say that at that time you had two jobs?

A Still do.

Q What were your jobs at that time?

A I was a supervisor in Trygon Electronics. I worked in the production area and --

Q How many people do you have working under you?

THE COURT: Let him finish the answer.

MR. GOIDEL: I am sorry.

THE WITNESS: And maintenanceman in the First National Bank, 1000 Willis Avenue.

Q In your position as supervisor, sir, how many people do you have working under you?

A I had approximately 50, 75 people under me. A number of people.

Q Can you tell us specifically what your job entails.

A Instructing someone how to do the job and showing them how to do it right.

Q Can you tell us whatthat job is?

A Electrical wiring.

MISS MYSLIWIEC: I don't see the relevancy of

this.

MR. GOIDEL: The relevancy --

MISS MYSLIWIEC: On this line.

MR. GOIDEL: You brought out the fact of his educational background I assume because of certain allegations made in your complaint. Now I certainly have the right to go into this man's ability to understand and so forth.

THE COURT: I think so. It is legitimate on cross-examination.

Q 50 to 75 people you say, sir, worked under you and you are their supervisor and you train them to do a job right. Will you kindly explain to us what that job is that you try to train them to do properly?

A Assembly, wiring and soldering.

THE COURT: Assembly, wiring and what?

THE WITNESS: And soldering.

Q Assembling, wiring and soldering what?

A Electrical power supplies.

Q What does that include, sir?

A What does that include?

Q What do you mean by power supply? I don't quite understand these terms.

A Power supply is a source of converting DC power

to AC power or AC power to DC power.

Q Is there any other type of machinery that you worked with other than the creation of this type of machinery?

A At that time, no.

Q How about now?

A No. It just began. Something that just began. It's not --

Q Do you give people instructions on how to perform their function, their job?

A As of now, no.

Q At that time?

A Yes.

Q How long had you been with the firm as of that time?

A Seven years, I would say.

THE COURT: Seven years prior to '72?

THE WITNESS: Yes.

Q Do you work for the same firm today?

A Yes.

Q In what capacity?

A Prototype technician.

Q I take it that that is a position higher than the position of supervisor which you previously had?

A Indirectly. Not really, no. It's approximately

the same.

Q Do you have people working under you now?

A No.

Q Not at all?

A No.

Q Do you work in an office?

A Yes, I work in a lab.

Q Pardon?

A In a lab.

Q You now work in a laboratory?

A Yes.

Q Electronics laboratory?

A Right.

Q At the time that you made this loan from the bank -- by the way, what bank was that?

A National Bank of North America.

Q Where were they located?

A In Mineola.

Q Had you ever borrowed money from them previously?

A No.

Q You did know that the bank loan rate for interest was lower than the finance company rate; is that correct?

A True.

MR. GARMANSKY: Objection.

MR. GOIDEL: He testified to that.

Q And when you selected this bank did you have any deposits or accounts or anything that -- did you have any relationship to this bank?

A Yes.

Q What relationship did you have to that bank?

A Checking account.

Q That's all?

A Yes.

Q What was your balance in that account at that time, if you know?

A I don't know. I have a savings account at another bank. I save at another bank.

Q Did you have a savings account in another bank at that time?

A Yes.

Q Did you know what the balance of that account was at that time?

A I don't remember.

Q Do you have any idea, sir?

A Maybe five, six hundred dollars. I don't remember.

Q Did you have any outstanding loans anywhere

else at that time?

A I was paying off a '69 Grand Prix. I bought it in '68. I was about to pay or paying off a '69 Grand Prix.

Q At that time?

A Three years after '69 -- November '68. Then November -- '70. Right. I was just paying off a '69 Grand Prix. Right.

Q At that time?

A At that time. Yes.

(Continued on next page.)

Q When Mr. Shevack met you, were you in 1964 or 1969?

A I was driving a 1964, '64 Chevy, blue.

Q But you owned a 1969?

A I owned a 1969. I still own it.

THE COURT: The '64 Chevy was your working car?

THE WITNESS: Yes.

THE COURT: You don't live in the suburbs, do you?

Q And I am limiting my questions now to Mr. Shevack.

Can you think of anything else he said to you standing in the corridor or lobby of that hotel on the first occasion other than the general conversation about $60,000 or more and these examples that he gave you? Did he say anything else?

A He was telling me about his car and his friend that was with him, that he had a nice car. But I didn't tell him anything about what I owned or nothing.

Q No. I understand that. I'm asking you as to what he said? Specifics, if you can remember specifics?

A I don't remember.

Q Can you remember any specifics?

A Specifics? He was just buying a house. One thing

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he said specifically, he was buying a house and was moving from the apartment into a house. That is one thing I remember. Other than that I don't remember.

Q Now, on the next occasion that you were with Shevack, that would be at another meeting of Galaxy?

A Yes.

Q And you had a conversation with him at that time after the meeting also?

A Yes.

Q Okay. And specifically what do you recall him saying?

A He says that you had better come in and join now so that you can get in and make some money too.

Q Anything else that you can recall him specifically stating to you?

A No, other than inviting some friends down with you. He was always trying to talk me into coming in to the meeting at Jamaica and Manhattan the next night, but I refused always.

Q Did there ever come a time when you went to Mr. Shevack and said, Look, I want out of this. Get me out. Buy me out or something?

A No.

Q How many meetings in all do you say that you

attended? How many opportunity meetings in all did you attend?

A Approximately 3 or 4 I would say, maybe 5.

Q Okay.

Now, during the course of any of these meetings or immediately following any of those meetings, can you think of anything that Mr.Shevack specifically stated to you other than what you have already related in answer to my last two or three questions?

A Before I joined he asked me could he come over and take me to the bank. And after the second or third meeting he asked me if he could come over and take me over to the bank to make out an application to get a loan.

Q Okay. Anything else that you can recall he specifically stated to you?

A Not that I can remember.

Q Okay.

Now, sir, I take it all the rest of the information that you therefore obtained concerning this corporation was obtained by your participating as the listener at the meeting?

A That's right.

MR. GOIDEL: No further questions, your Honor.

THE COURT: Mr. Padilla?

MR. PADILLA: I have no questions.

REDIRECT EXAMINATION

BY MISS MYSLIWIEC:

Q Just a few more questions, Mr. Simmons:

When you went to the bank with Mr. Shevack, you testified that he filled out the loan application and that you carried the loan application to the bank officer.

Now, I'm not sure on your testimony, but you said that you didn't read the entire loan application.

Did you read any part of the loan application before you handed it in to the bank officer? You know, did you skim it or anything?

A Yes, I sort of looked at it, but I didn't read it carefully to see actually what was on it. But I knew he had filled it out for $2,000 and it was to buy new furniture.

Q This was a printed application? Was there a lot of printing on the form or was it mostly a handwritten application?

A Do you mean typed?

Q Yes, typed.

A It was mostly a typed application.

Q Did you read all the handwritten portions on the

application?

A Yes.

Q All right.

Now you testified at the meetings that you observed a blackboard demonstration.

And you recall the figure of $60,000 in that blackboard demonstration.

Now, can you tell us why the figure of $60,000 stuck in your mind more than the other figures?

THE COURT: He answered that. You are really wasting time on that one.

He said because it was the one that came up all the time.

Now how do you want to prove that? We have a lot more witnesses. There is no use in gilding the lily.

MISS MYSLIWIEC: All right, that was my last question. I have no further questions on redirect.

MR. LERNER: At this time, we have no further witnesses for this afternoon. I realize it is early, and it is quite a shock to us --

THE COURT: Perhaps it was because your assistant was so efficient.

MR. LERNER: She was wonderful. I can say this --

THE COURT: Then I would ask you to send her in more often.

MR. LERNER: I will certainly take it under advisement.

We have made a decision to try to eliminate most of the cumulative testimony which subsequent witnesses will present --

THE COURT: Perhaps this gentleman would like to be released at this point. You are free to go.

(Witness excused.)

MR. LERNER: So we certainly expected to have more witnesses on hand, your Honor --

THE COURT: All right, what is your expectation?

MR. LERNER: Our schedule, as it stands now, and we have gone over the list. I think we have eliminated one or two witnesses which we intended on calling completely. We intend now, on calling the two defendants to the stand and several additional investor witnesses. I think there are about 5 or 6 and that will be our case.

THE COURT: Some on this order?

MR. LERNER: More concerning Mr. Shevack and Mr. Padilla.

THE COURT: Well, we finished this witness in an hour and three-quarters, didn't we, or an hour and a half.

Of the witnesses other than Shevack and Padilla, would they be more likely to take more than an hour and a half apiece?

MR. LERNER: Not likely at all.

THE COURT: Now, let's see, you think you have -- how many more have you got?

MR. LERNER: Approximately 5 or 6 additional investor witnesses, approximately.

THE COURT: So if we succeed in doing them in an hour and a half apiece, we still have anywhere from 7 and a half to 9 hours which for all practical purposes is two days. Correct?

MR. LERNER: Two days of witnesses.

THE COURT: Aside from --

MR. LERNER: In addition.

THE COURT: In other words, 4 and a half hours if you are talking about 6 witnesses and 9 hours, an hour and a half apiece, so we are talking about tomorrow and Thursday. And Friday, as you know -- well, you don't know but I will tell you, th

I have both motions and sentences. And at 2 o'clock Friday afternoon, I have been induced to try this short criminal non-jury case starting at 2 o'clock and going over until Tuesday.

So that that fellow can get back into the clutches of the United States Army, his leave has been extended and the Army is getting restless.

MR. LERNER: Your Honor, after speaking with my associates, I do not think the direct examination of Mr. Shevack and Padilla will go to anywhere near the length that the examination of Mr. Kirsch went, nor definitely not the length of Mr. Lieberman.

THE COURT: If we can finish, then 6 witnesses no later than Thursday -- youare free tomorrow and free on Thursday --

MR. LERNER: We will certainly try.

THE COURT: Do the witnesses you have in mind, the 6 investor witnesses, present any special complications of any kind that would prolong their testimony to what we have heard in this past hour and a half today.

MISS MYSLIWIEC: No.

MR. GOIDEL: I do not mean to dampen things, but --

THE COURT: There is a little leeway here,

you understand.

MR. GOIDEL: It was my intention when Mr. Shevack takes the stand, if he is called --

THE COURT: I am not talking about Shevack yet.

MR. GOIDEL: I am sorry.

THE COURT: Just the investor witnesses, which based upon today's gauge, if it is that, we may anticipate that we will consume 9 hours of testimony moving with the efficiency that this young lady produced here today, you too, Mr. Goidel, I give you credit for that, Mr. Padilla, for not having any questions at all.

MR. LERNER: I understand your Honor, we are talking about a time period or frame.

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THE COURT: Just an approximation.

MR. LERNER: You're not trying to --

THE COURT: What I am saying is just this, in an effort to accommodate all the people who demand court time, if we consume tomorrow and Thursday in completing your investor witnesses, it still does leave you high and dry as far as Mr. Shevack and Mr. Padilla are concerned.

MR. LERNER: In terms of which we intended them to take the stand, we intended to place Mr. Shevack's investor witnesses on first and then take Mr. Shevack and have him testify, and then do likewise with Mr. Padilla. If that presents any unique problem for the Court I suppose we could accommodate the Court.

However, that was our strategy.

THE COURT: My own feeling on it is this, as far as strategy is concerned, if we are dealing with a jury here and there was some particular impact to be left with the jury as a result of hearing Mr. Shevack's testimony, after hearing Mr. Shevack's investor witnesses, I could well understand the strategy. But I am not the jury even though I am supposed to be the trier of the facts. And my own feeling is, since I am somewhat

of a copious notetaker too, that if you can get through your 6 investor witnesses all at once, then I probably would get the message after hearing 6 of them, one after the other.

And then I could turn my undivided attention to whatever you are going to do with Mr. Shevack and Mr. Padilla, --

MR. LERNER: Your Honor --

THE COURT: -- if it is possible.

MR. LERNER: Is it understood that -- well, we will make every attempt to finish him in two days.

THE COURT: I do not even like to suggest the possibility -- but do we have anything to interrupt this tomorrow? I would even suggest that you try to have two witnesses here, having one perhaps come at even 11 o'clock.

MR. LERNER: Can we start at 9' 30 tomorrow morning?

THE COURT: Mr. Simon, how about that?

MR. GOIDEL: Your Honor --

THE COURT: What's your problem? I am willing to.

MR. GOIDEL: It is rather difficult for me to take care of my office and at the same time be here every day. I think your Honor can appreciate this.

What I have been doing is running into the office and getting the mail out of the way and then running back here. On the one or two days I could do that, I even had my secretary carry the mail here to the courtroom. I hope to spend a half hour in my office for the phone to start ringing at 9 o'clock, that is just to take care of some calls.

But frankly, it is just piling up. I am carrying them around in my pocket.

THE COURT: You are a single practitioner?

MR. GOIDEL: No, I am not a single practititioner, your Honor, but --

THE COURT: You have a partner?

MR. GOIDEL: My partner happens to be on trial, one of them, in this court yesterday. I don't know whether he is still on trial.

My other partner is on trial in the Surrogates Court in Manhattan. We just meet at 7 o'clock in the evening, usually, 6:30 and we have begun to forget what each looks like. It has been one of those situations.

As you see, Judge Ward called up yesterday, and the Court of Appeals has me on for another trial after this.

THE COURT: Judge Ward would appreciate it if I got you out of this fast by making you come in at 9:30 so we can get it done.

MR. GOIDEL: Judge Ward has already established November 1 as the date of trial.

MR. PADILLA: I work nights and getting up here by 9:30 in the morning is really cutting into my sleep time. I am not getting enough sleep now. I don't get home until about 2 o'clock in the morning.

THE COURT: Well, under the circumstances I suppose I can't be difficult. So perhaps we can arrange, though, to start promptly at 10.

MR. LERNER: Absolutely.

THE COURT: You have two witnesses for the morning and two for the afternoon?

MR. LERNER: Fine.

THE COURT: So we will try to get them in.

MR. LERNER: We will try to do that.

THE COURT: Yes, try to.

MR. LERNER: I would like only one courtesy from the Court: If we do have a second witness, here, in the afternoon, if the Court would try to stay late as we can so we can finish the witness so he doesn't have to come back.

THE COURT: Oh, yes, we will try to keep ourselves to a time schedule.

MR. LERNER: Most of these people work, so it is a problem.

THE COURT: I understand.

If you should get rid of four tomorrow, you will have two left for Thursday. You then might get a chance to get to one of the principals.

MR. LERNER: Great.

THE COURT: We will work that out. Then we will have to suspend operations because of these other cases. And then we have the problem Monday, that being a holiday, and that will be a problem. You understand that. It's a legal holiday of the Court and we won't have any reporters or anybody else available. That's a three-day Congressional weekend. You remember Congress arranged that. So Tuesday, as I say, the 15th, I will be taking the other case and hopefully, perhaps, finish it.

But again, one never has a guarantee of these things. So that now my question is this:

I have another case ready for trial. And if we could finish this case -- if I am finished with the criminal case, we could finish this case up on the 16th. So maybe I should get these other people

in. They have been very anxious. They have had many firm trial dates that the Court was unable to keep because of criminal cases and because of one thing and another.

And I finally told them -- I didn't realize this case was going to go this long. I thought oit would be much shorter --

MR. LERNER: It is a good thing that we got rid of a few defendants in this.

THE COURT: I understood or I thought it would be perhaps somewhat shorter.

So now my question is, do you think this case could be finished up as far as the evidence is concerned on the 16th, and I would be willing to pick that up on the 16th and tell the other people to wait a day or two?

MR. LERNER: Do you mean have Mr. Shevack and Padilla on in a single day?

THE COURT: If we make progress, as we have been discussing it here, tomorrow and Thursday, you might be able to have Shevack on Thursday afternoon, I don't know.

MR. GOIDEL: I certainly have no objection to it. The scope of my examination, of course, with regard to Mr. Shevack, can take two different

avenues. I can simply cross examine him as I would any witness or at the same time try to put in my own case if I feel it is necessary for me to do that.

THE COURT: Rather than cross examine?

MR. GOIDEL: Well, not rather than cross examine, but simultaneously with the cross examination, or I could just cross examine as I would any witness and then let them rest their case and see if I wanted to go forward, and in which case I would put him on on direct testimony.

(continued next page.)

THE COURT: Do you wish to take Mr. Shevack before you wish to take Mister --

MR.LERNER: In terms of witnesses, your Honor --

THE COURT: I suggest Mr. Shevack be informed his presence would be required here by Thursday afternoon. With the possibility that we are able to work a miracle tomorrow --

MR. GOIDEL: I will have him here Thursday all day. If we need him in the morning -- Do we mean this Thursday?

THE COURT: Yes.

MR. GOIDEL: I will have him here this Thursday.

THE COURT: Yes. Tomorrow is Wednesday and we expect to deal with at least three or maybe four, hopefully four, of the investor witnesses, and Thursday morning with two investor witnesses possibly so that Thursday afternoon they may be able to take on your man. At which case the prospect may look good if the case is not completed on Thursday it can be picked up again on Wednesday the 16th. As far as they are concerned and maybe as far as you and Mr. Padilla are concerned.

MR. GOIDEL: I understand.

THE COURT: Then I would expect that time would be required for the preparation of post-trial briefs

and I would even say to extend any oral argument until the briefs are ready so we can focus on things in light of that.

MR. LERNER: It sounds fine. I would like to see it come off that way.

THE COURT: Let's see what we can do on that day. I will see you tomorrow morning hopefully ready to go at 10 o'clock sharp.

(Whereupon, a recess was taken at this time until October 9, 1974, at 10 a.m.)

* * *

I N D E X


| WITNESSES | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| Howard Ray Beck | | 988 | 1006 | 1014 |
| Paul John Deceglie | 1017 | 1096 | | |
| Branch Simmons | 1108 | | | |


EXHIBITS


| GOVERNMENT'S | DESCRIPTION | FOR IDENT. | In EVID. |
|---|---|---|---|
| 28 | Tax returns and information | 1020 | 1020 |
| 29 | Agreement | | 1055 |
| 30 | Checkstub | 1091 | 1093 |
| 31 | Checkstub | 1091 | 1093 |

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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SECURITIES EXCHANGE COMMISSION, :

Plaintiff, :

-against- : 73-C-1742

GALAXY FOODS, et al., :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 9, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

ALLAN LERNER, ESQ.
HARRY GARMANSKY, ESQ.
REGINA MYSLIWIEC, ESQ.
JULIA WILLIAMS, ESQ.
Attorneys for SEC

ALVIN GOIDEL, ESQ.
Attorney for Defendants Sheback and Kirschenblatt

GEORGE PADILLA
Pro Se

THE COURT: Good morning.

THE CLERK: Case on trial, Securities Exchange Commission against Galaxy. All parties present with the exception of Mr. Padilla.

THE COURT: I think we will proceed.

MR. GARMANSKY: We would like to call Mr. Melvin McLean.

M E L V I N J . M C L E A N , a witness called herein, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. GARMANSKY:

Q Where do you live, Mr. McLean?

A Brooklyn.

Q Can you give us the exact address?

A 127 Linden Street.

Q Where are you employed?

A Morgan Guarantee Trust Company.

Q What do you do there?

A Securities clerk.

Q What is your educational background?

A High school graduate. A couple of college credits.

Q Have you ever heard of a company called Galaxy Food, Incorporated?

A Yes.

Q When for the first time did you hear about Galaxy?

A It was in the summer of 1972.

Q Will you please describe the circumstances under which you heard of Galaxy?

A Well, I was on my lunch hour one afternoon and a gentleman pulled up in a late model car and stopped me and said, "How would you like to earn about $50,000 a year?"

I looked and I smiled and I said, "How? Is it legal?" He said, "Yes, it is legal."

"What do I have to do to earn this type of money?" He said, "Here is my card. Come tonight and I will show you."

I said, "Can you give me some information here right now?"

He said, "No. I am in a hurry. I can't explain anything to you right now. Come tonight and I will show you."

Q Did you know Mr. Schevack prior to this?

MR. GOIDEL: Objection.

THE COURT: I don't think he identified this man

MR. GARMANSKY: I'm sorry. Withdrawn.

THE COURT: What was the amount Mr. McLean

referred to in the testimony?

MR. GOIDEL: $50,000.

THE COURT: All right.

Q Mr. McLean, did this individual who approached you on the street identify himself?

A He didn't say. He didn't give me his name at the time.

Q Did he give you anything?

A A card with his name on the bottom.

MR. GOIDEL: Objection.

THE COURT: Well, he --

MR. GOIDEL: He can say he gave him a card. He can't say it identifies him as being that person.

THE COURT: He may testify as to what name appeared on the card.

Q Had you ever met this individual prior to that time, Mr. McLean?

A No sir.

MR. GARMANSKY: I would like to mark as Plaintiff's Exhibit 32 this card.

THE CLERK: In order not to deface the card I attach a piece of paper with my ticket on it and mark it Plaintiff's Exhibit 32 for identification.

So marked.

Q Mr. McLean, I would like to show you what has been marked Plaintiff's Exhibit 32.

Do you recognize it?

A Yes, I do.

Q How did you receive that card, Plaintiff's Exhibit 32?

A This is the card the gentleman gave me, one Artie Shevack.

MR. GARMANSKY; I would like to offer it.

THE COURT: Artie Shevack, is that what it says?

MR. GARMANSKY: On the card it says Arthur. It is offered in evidence as Plaintiff's Exhibit 32.

(Pause.)

MR. GOIDEL: May I conduct a voir dire?

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. GOIDEL:

Q Sir, the card, when given to you, did it have this writing appearing on the face?

A Yes sir.

Q And down here at the bottom?

A Yes.

Q How about on the reverse side?

A No.

Q Nothing on the reverse side appeared on the card when handed to yoU?

A No.

Q But the front of the card is the same?

A Yes.

MR. GOIDEL: Your Honor, I will have no objection to the introduction as long as anything appearing on the back for the purposes of this trial unless the witness testifies with regard to it should be excluded.

THE COURT: For the present we will admit the face of the card as the exhibit.

MR. GOIDEL: Thank you, sir.

THE CLERK: May I have it to mark it in evidence?

MR. GARMANSKY: Yes.

THE CLERK: So marked in evidence as indicated by the Court.

DIRECT EXAMINATION

BY MR. GARMANSKY: (Continuing)

Q Mr. McLean, did you subsequently find out who the individual was who approached you on the street?

A Yes.

Q Who was that?

A Artie Shevack.

Q Did you attend this meeting that Mr. Shevack told you about?

A Yes.

Q When did you attend the meeting?

A That same evening.

Q Where was the meeting held?

A New York Hilton.

Q How many people were present at this meeting?

A Approximately 50.

Q Did any persons speak to the people present at that meeting?

A Yes.

Q Approximately how many speakers?

A About three speakers.

Q Do you recall any of these speakers?

A Yes, one in particular. One Mr. Steven Roth.

Q Mr. McLean, did any speakers explain to you how a person could earn money in Galaxy?

A Yes.

Q Do you know who that speaker was?

A Steven Roth and the speaker before him.

Q Would you please tell the Court what Mr. Roth said?

MR. COIDEL. May we have that first speaker

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identified?

MR. GARMANSKY: Pardon me.

THE COURT: Steven Roth.

MR. GOIDEL: That was the second.

MR. GARMANSKY: He didn't identify the first.

THE COURT: Then I misunderstood. I heard there were three speakers and he identified one as Steven Roth.

Q Do you recall the other speakers?

A No, I can't remember who it was.

Q Would you please tell the Court what Mr. Roth told you concerning how a person could earn money in Galaxy?

A Mr. Roth said this is a growing company of the future. You can earn money in this company two ways, the first one is the way we are doing it at present. That is by selling franchises, getting the individuals to join. The sale of these franchises, you receive a commission from each individual you bring into the company. And on the other hand the distribution of the groceries when we are established and start selling the groceries. Which is for each customer you have and when these customers buy groceries from you you receive a commission from the sale of these goods and that customer will be yours forever. And they showed a figure on the blackboard, by X amount of customers you could earn

up to $48,000 to $50,000 a year with Galaxy. And he said the say to do it is, to join Galaxy is two ways, either become a field manager or distributor. Field manager franchises would be sold at $2,000 and distributorships would be sold for $5,000.

Q Mr. McLean, going back to one point, where were you working at the time you attended the first meeting?

A The same company I work for now, Morgan Guarantee.

Q What was your salary?

A About $140.

Q A week?

A Yes.

Q At this first meeting you attended, do you know what the meeting was called?

A Presentation.

(Continued next page.)

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DIRECT EXAMINATION

BY MR. GARMANSKY: (Cont.)

Q Now, did any of the speakers state how much a person could earn at Galaxy?

MR. GOIDEL: I am going to object unless the speaker is identified.

MR. GARMANSKY: The question calls for a yes or no, then I will ask.

MR. GOIDEL: It should be the reverse, who else spoke and what did he say.

THE COURT: I think we are --read the question.

(Question read.)

THE COURT: Well, he already testified as I understand it, that Mr. Roth stated what he could earn.

I think the question really is. Did anyone else speak on that subject, Mr. McLean.

THE WITNESS: Yes. But I can't recall the name. I don't remember who they were.

BY MR. GARMANSKY:

Q At this time was any blackboard used at this meeting?

A Yes.

Q Would you tell the Court how the blackboard was used in the meeting?

A Yes.

Q Would you tell the Court how the blackboard was used in the meeting?

A The speaker before Mr. Roth, he put some figures on the blackboard showing that by getting two customers, right, for the sale of food that each customer, you know, what you spent in the market per week, these customers shopping every week, buying groceries, it would amount to X amount of dollars per year.

Q The figures that you mentioned previously that a person could earn at Galaxy were these figures put on the black --

A Yes, forty-eight to sixty thousand dollars a year.

Q Did Mr. Roth use those figures in his presentation?

A Yes.

Q Was there any reaction from the audience that you observed?

A When Mr. Roth explained the figures on the blackboard, there was a cheer and applauding from the audience.

Q Did any speakers, Mr. McLean, talk about his distribution of customers?

A Yes.

Q Who said that?

A Mr. Roth.

Q Would you please tell the Court what he said?

A Mr. Roth said any amount Galaxy would get -- Galaxy would get the first thousand or so customers and when we get those customers they will be distributed amongst the field managers and distributors equally, no preference, every one will have the same amount of customers.

Q Did anything else occur at this meeting that you attended, Mr. McLean?

A Yes. Coming on to the end of the presentation, there were a few people in the audience who said, "I have a check already." And Mr. Roth said, "Come up to the platform," you know, with the check.

Mr. Roth would read the check and say, "So-and-so has become a new member of Galaxy."

Whatever position, may be field manager or distributor, this took place about three times during the course of the effect of the presentation.

And there was some more applauding and cheering when these people would stand up and became new members in Galaxy.

Q At this meeting was Mr. Shevack present also?

A Yes, sitting next to me.

Q What was Mr. Shevack doing when you noticed the people present cheering and applauding?

A He was also cheering and applauding.

Q Was he doing this at the same time you observed the other people doing it?

A Right.

Q WHat happened after this meeting was over?

A After the meeting was over, Mr. Shevack said to me, "Well, what do you think?"

I said, "It sounds very good."

He said, "Well, would you like to join Galaxy?"

I said, "I sure would but there is one big problem, I don't have the money to join Galaxy."

He said to me, "Where are you working?"

I said, "Morgan Guaranty Trust Company."

He said, "How much do you make?"

I said, "$140 per week."

He said, "If you really want to join Galaxy I can get you into Galaxy, Galaxy Company."

He said to me, "Where do you live?"

I said, "In Brooklyn."

He said, "How did you get here?"

I said, "I came by subway."

He said, "How are you going back home?"

I said, "By subway."

He said, "Nonsense, I am driving you home."

Q Did Mr. Shevack take you home?

A Yes.

Q Was there any discussion in the car concerning Galaxy?

A Yes.

Q Please tell the Court what did he say to you and what did you say to him?

A He said to me, "Before I joined Galaxy, I was working on Wall Street, making $125.00 a week."

I said, "Oh, yeah?

He said, "Yes."

"And Mr. Lee was a very good friend of mine and he told me about Galaxy Corporation."

He said, "After a while I seen these guys making money with Mr. Lee, so I decided to join Galaxy." He said to me he didn't have the money also, but he borrowed the money to join into Galaxy. And he said to me, "If you really want to join Galaxy, I can help you. You know I can help you get the money to join."

Q Did Shevack tell you he was making money in Galaxy?

A Yes.

Q Did he tell you what he was doing with the money?

A He told me, first of all he bought himself a new late model Cadillac ElDorado and in the process of purchasing a new home right now.

(continued next page.)

DIRECT EXAMINATION (Cont'd.)

BY MR. GARMANSKY:

Q Did Mr. Shevack give you any type of figures, how much he made in Galaxy?

A At that time he told me he was making between -- already made between thirty - to forty thousand in Galaxy.

Q Did Mr. Shevack ever show you any documentation which reflected any amount of money he made in Galaxy?

A I don't think so. Not in the car. He just told me he already made thirty - to forty thousand in Galaxy.

Q Did he ever show you any documentation at a later time?

A Yes, at my home.

Q What did he show you?

A Some checks. Galaxy that weren't cashed yet. Three checks that weren't cashed yet. I know I saw one for $3,000. And then he showed me some check stubs also from Galaxy.

Q Did you notice any other amounts of money besides the $3,000 check?

A I could only say $3,000, that was the one on top.

Q Was this on any particular type of stationery, these check stubs?

A No.

Q Did you see anything about Galaxy on these check stubs?

A Yes.

Q What did you observe?

A The name Galaxy Food. I remember the check they used to pay they were the same type color check they paid with.

Q Mr. Shevack took you home that night after the first meeting and dropped you off?

A Yes.

Q What happened next concerning Galaxy, Mr. McLean?

A A few days after, Mr. Shevack called me on my job and he asked me how was I makin gout with money. I said I haven't -- no money as far yet. He said well, there is one thing left we have to do, try the banks and see if we can get a loan for you from the bank. So I said,"Mr. Shevack, I don't want to take out no loan from the bank because I already owe First National City Bank a loan and finance company money," he said, "Don't worry about it, you are doing it with your family, if you get this loan you will be able to pay it off in time and you won't regret it in the future."

Q Did Mr.Shevack mention how you were going to

obtain the loan?

A He said he was going to take me to the bank of North America to get the loan.

Q Was any type of appointment set up?

A Yes, he said he would call you on your job tomorrow morning, and make a date. He asked me what time I go to lunch, I said between 1 and 2. He said, I will call you around 11:30 and let you know if I will be there or not, then we could go to the bank and get the loan.

Q How long was this after your first meeting you attended in Galaxy?

A This was about probably ten days to two weeks.

Q Did Mr. Shevack call you the next day?

A Yes, he called me that morning. And he said to me okay, can you go to lunch 12:30. I said I normally go at 1:00 o'clock but I could leave a little earlier today and meet you 12:30. He said okay. I will be downstairs parked in front of the bank at 12:30. Meet me at that time downstairs.

Q Did you meet Mr. Shevack 12:30 that day?

A Yes.

Q Where did you go?

A Around the corner from Morgan Guaranty where I work to the bank of North America.

and his brother or brother-in-law works for one of the banks and that he could help get loans for people to join Galaxy. I said okay, I put down my wife as working in this company in Brooklyn.

MM fls.

Q Did you go into the bank?

A Yes, I did. I went into the bank.

Q Did Mr. Shevack accompany you into the bank?

A Yes.

Q What did you do when you and Mr. Shevack went in the bank?

A I went and I took a loan application and I started filling it out, before I did that, he said to me, "Do not put reasons for the loan that you want to -- that you want to invest into a company because you won't get the loan that way, the reason should be you want to buy furniture." And he also said to me, "Put on the loan that your wife is working at a company in Brooklyn" So I said to him, I said, "I can't deny that my wife is not working. How can I put down she's working for a company in Brooklyn." He said to me, "It is no problem. If they call at this place, we have people to answer the phone and say, 'Yes, she is working at this company.'" He said, "This way you put down your wife and you are working together and you will obtain the loan much easier." I said to him, "I don't think it's a good idea, you know, to put down that she's working." He said that "I have obtained loans for most of the people I brought in this way. And I also have -- there are also a few guys in the company, George Padilla," he said he is a top money earner in Galaxy

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DIRECT EXAMINATION

BY MR. GARMANSKY: (Cont.)

Q Do you recall the company?

A I don't remember the name of the company.

Q Did you put down the purpose of the loan was for furniture?

A Yes.

Q Did you sign this application?

A Yes.

MR. GOIDEL: I object.

The best evidence rule I think comes into play here and I think we are concerned with the application and the application will speak for itself, and it will be offered in evidence.

If the application is not available it is certainly subject to subpoena.

MR. GARMANSKY: We first have to ascertain whether the loan was approved. If it is not approved they don't keep applications gluttering up their files.

THE COURT: Was the loan not approved?

MR. GARMANSKY: It was not approved.

THE COURT: Why don't you bring that out? There is no use wasting time on this. If it hasn't,

bring it out.

BY MR. GARMANSKY:

Q Did you sign this loan application?

A Yes, I did.

Q Did you give it to anyone in the bank?

A Yes, I gave it to the loan manager and they looked it over and he said --

MR. GOIDEL: Objection.

THE COURT: I will overrule that objection.

Q Please continue.

A I gave it to the loan manager and he looked over the loan and he said, he asked me a few questions. He said to me,everything on this loan application seems right to me, I don't see why you shouldn't get this loan.

He said, you should hear from me in two days, I will give you a call in two days and he gave me his card and he said you will hear from me in two days.

Q Did you have any discussions with Mr. Shevack after you gave this loan application to the bank?

A Yes, I said to him, "I don't like putting down on this loan application that my wife is working when she is not working."

He said to me, "Your duty is for you and your family and I told you before there is nothing to it and tha

you should get the loan."

Q Now, did you receive the loan from the Bank of North America?

A No, I did not.

Q How much did you apply for?

A I think it was either 1500 or $2000.

Q Did communicate this fact to Mr. Shevack?

A Well, as a matter of fact Mr. Shevack, he knew I didn't get the loan --

MR. GOIDEL: Objection to what Mr. Shevack knows. He can say what Mr. Shevack said.

THE COURT: Yes. You can say what he said to you.

THE WITNESS: Well, Mr. Shevack said to me, "You did not get the loan. The loan was not approved," He said. So

So I said, "How do you know?"

And he said, "I called the bank and they told him they turned my application down.

BY MR. GARMANSKY:

Q Was anything else discussed with Mr. Shevack at that time?

A Yes. He said to me, "All right, don't worry about it, still. We'll try a finance company and we will

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get the money for you."

Q Did Mr. Shevack name any particular financi company?

A He said,"There is one in particular, Household Finance, I will take you to Household Finance and we will get the loan for you from them."

Q Did you go to Household Finance?

A Yes.

Q Who did you go with?

A Mr. Shevack and Peter Cancilla.

Q Who is Mr Peter Cancilla?

A He is Mr. Shevack's partner.

MR. GOIDEL: I move to strike that characterization.

THE COURT: All right. I will strike the characterization, perhaps some further questioning will clear that up.

BY MR. GARMANSKY:

Q Did you have any discussions with Mr. Peter Cancilla?

A Yes.

Q Did MR. Peter Cancilla tell you what he was doing for a living?

MR. GOIDEL: Objection as to anything that a

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non-party to this litigation said.

MR. GARMANSKY: Withdrawn.

Q Did you have any discussion with Mr. Shevack concerning Peter Cancilla?

A Yes.

Q Did Mr. Shevack tell you who Peter Cancilla was?

A Yes.

He told me that Peter Cancilla was his partner, that Peter Cancilla, before he came to Galaxy that he wasn't working and couldn't find a job and so forth.

He told me right now that he got Peter Cancilla into Galaxy lending him money to join up and when Peter got into the company, Peter paid him in approximately two weeks and now Peter Cancilla is doing well, and bought himself a new Cadillac and he is planning to get married and buying a house,also, in the future.

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1 McLean - direct

DIRECT EXAMINATION

BY MR. GARELICK (Cont'd):

Q Did you make out a loan application at Household Finance?

A Yes.

Q Did Mr. Shevack accompany you to Household Finance?

A Yes, he took me over there in his car.

Q Did he go into Household Finance with you?

A No, he stayed outside in his car.

Q Did Mr. Shevack instruct you in any way concerning your loan application with Household Finance?.

A Yes, he told me to do the same thing, to put an application like I need a loan for furniture.

Q Did Mr. Shevack tell you how much to borrow?

A He told me to ask for $1,000, put in for $1,000.

Q Did he give you any reasons for this figure?

A Well, he said, the less money I put down, there is a better chance of me obtaining the loan. So I applied for $1,000 on the application.

Q Did Mr. Shevack instruct you in any way concerning your wife?

A No.

Q Did you put down on the application concerning that your wife was employed?

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A No.

Q Now, did you fill out a loan application at Household Finance?

A Yes.

Q What did you put down for the purpose of the loan?

A To purchase furniture.

Q Did you sign that loan application?

A Yes, I did.

Q Did you give it to anyone at Household Finance?

A Yes. I gave it to Mr. Persico, manager of Household Finance.

Q Did you receive any proceeds from Household Finance?

A Yes.

Q How much?

A Approximately $700.

Q Approximately how long did you wait to get this money?

A Approximately two or three days.

Q What did you do with the $700?

A Well, the day I got the check for the $700, Mr. Shevack and Mr. Cancilla brought me over to the finance company to pick up the check, so when I came out and got into

the car with the check, Mr. Shevack took the check out of my hand and he said, "Contragulations, you're on the way to becoming a new member of Galaxy Food Company."

Then he took out a contract and told me to sign my name to the bottom of the contract, which I did. I gave him back the contract.

Q Did you read this contract before you signed it?

A Yes.

Q What did the contract say?

MR. GOIDEL: Objection.

THE COURT: I think we have a best evidence situation.

MR. GARMAISKY: We don't have the contract, your Honor. This is the best evidence.

MR. GOIDEL: Show a facsimile.

MR. LERNER: We don't know which one the witness had.

THE COURT: Well, show him both of them.

BY MR. GARMAISKY:

Q Does this appear to be the contract you signed?

A That's not a contract.

Q What color was it?

A The same as that but that isn't the one I signed.

Q What color was the paper --

THE COURT: So I understand -- Well, show him the three of them. Ask him to look at them.

Q Did you recognize -- Well, do you recognize any of these, Mr. McLean?

A Yes, I do.

Q Which one do you recognize?

A The one Mr. Shevack gave me to sign was this one, the white one.

Q It was white?

A Yes.

MR. GAGLIARDI: This is Plaintiff's Exhibit d in Evidence.

Q Was it just one sheet of paper to sign?

A Yes.

Q And it was white?

A Yes.

Q What did you do after you signed that sheet of paper?

A Mr. Shevack told me --I said, "Well, you know, give me the check back," and he said, "No, I want to take the check over to the Galaxy Company and give it to them, deposit the check with them with the contract here."

"So I said, "Okay." I said, "When will I hear from you?" And he said, "I will call you Sunday," meaning

Sunday, the Step-Up presentation at the warehouse of Galaxy Food.

Q Now, what position were you going to join Glaxay?

A As a field manager.

Q How much was that field manager position?

A $2,000.

Q And how much money did you give Mr. Shevack?

A $700.

Q Now, did Mr. Shevack tell you you were now a field manager?

A Yes, he did.

Q Did you ask him how -- did you ask him any questions when he told you?

A I didn't ask him at that time.

Q What did you ask him?

A I didn't ask him at that time but I asked him at the Sunday presentation, "how can I become a field manager with just giving you a check for $700?" And he said, "What we will do is anybody that you get to join into Galaxy Food will go towards the $700," if I could get three customers to join that would be my fee of $2,000 to Galaxy because each person that joined you get $500.

Q Did Mr. Shevack ask you who you would be working

for?

A Mr. Shevack and Peter Cancilla.

MR. GOIDEL: I object.

Throughout now, and I have given wide latitude and this witness has been led and led.

I think questions should be asked: Was anything said, who said what to whom, but I do not think it should be in the form it was read at this time.

THE COURT: Read back the question and answer.

(Question and answer read.)

(Continued on next page.)

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MR. LERNER: It does not require a yes or no answer.

MR. GOIDEL: That is why it is incorrect.

In effect you are saying to this witness that something along that subject was said to him, now repeat what it was.

A proper question is, was anything else said to you? Did you say anything else to him? That is the proper way to ask the question of your own witness.

THE COURT: I will agree that it is leading. I will caution counsel about leading the witness.

Have him recall what was said respecting a certain matter.

BY MR. GARMANSKY:

Q Now, Mr. McLean --

MR. LERNER: May we have amoment, your Honor.

THE COURT: Yes.

Q Was any arrangement discussed with Mr. Shevack?

MR. GOIDEL: Objection to the form.

THE COURT: Again you brought him to the point where he had a conversation with Shevack regarding the check and the possibility of supplying the balance, if he does certain things.

Now, was there anything more said between the

two of them at that time?

Let us see if we can first explore the witness' recollection and then we can proceed to the next event.

BY MR. GARMANSKY:

Q Was anything else discussed between you and Mr. Shevack at this Sunday step-up meeting?

THE COURT: No, it wasn't at the meeting.

We still haven't gotten to the Sunday meeting yet.

MR. GARMANSKY: I believe he testified that when he saw Shevack at the Sunday, step-up meeting, he asked how can I join as a field manager for only $700.

THE COURT: Perhaps I missed that.

I thought this all took place at the time he took over the check and signed the contract and that one of the questions he asked was how he could become a field manager for $700, and as I understand it, Shevack told him that if he brought in people, three people, for example, he would get $500 for each one and that could be used to make up the balance.

Is that correct, Mr. McLean.

THE WITNESS: This was at the step-up meeting when I asked him.

THE COURT: Which step-up meeting are you

talking about, the one at the warehouse.

THE WITNESS: Yes.

THE COURT: In other words, you were at the warehouse when this occurred.

THE WITNESS: Yes.

THE COURT: He already had your check.

THE WITNESS: Yes.

THE COURT: And you already had signed that document that was shown to you.

THE WITNESS: Yes.

THE COURT: All right.

BY MR. GARMANSKY:

Q Now, did you receive a copy of the contract you signed?

A No, I did not.

Q Did you have any other discussions with Mr. Shevack at this Sunday step-up meeting concerning your payment of $700?

A Yes.

Q Please tell us what was discussed?

A At the Sunday step-up meeting I said to Mr. Shevack, how can I become a field manager giving you a check for only $700?

He said, what we will do is that the Galaxy

Company will hold the check you gave us here and each individual you bring in, you will be working with me and Peter Cancilla, and each individual that you bring in to join in Galaxy will go towards your commission to become a field manager. That is what he told me.

Q What happened next, Mr. McLean?

A At the step-up meeting -- on Sunday, they paid the people who worked for Galaxy, so when his name come up, I think the check was $6,000, and he said, do you see how easy it is? I made $6,000.

MR. GOIDEL: That he made personally.

THE COURT: No, this is just someone in the audience.

Q Do you know who this person was who received this $6,000?

A Mr. Shevack himself.

He said, do you see how easy it is? In one week I made $6,000.

I said that is pretty good.

He said, if I can do it, so can you. That was it.

Q Now, Mr. McLean, did you sponsor anyone into Galaxy?

A Yes.

Q How many people?

A Three.

Q Who were these people?

A My cousin, Wendel James, and two brothers from the West Indies. I do not remember their names now.

THE COURT: Not brothers of yours?

THE WITNESS: No.

THE COURT: You cannot recall their names.

THE WITNESS: No.

Q Do you recall whether or not these people joined or invested in Galaxy?

A Yes, all three of them did.

Q Do you recall what positions they invested in?

A One was a distributor and two as field managers.

Q These two brothers, did they join separately or in one field manager position?

A Separately. One was a distributor and one field manager.

Q How about your cousin?

A Field manager, separately.

Q Do you know when these people joined?

A I would say around the month of August.

Q What year?

A 1972.

Q Did you bring these individuals, these three individuals you just mentioned to Galaxy meetings?

A Well, I brought my cousin but the brothers, I met them at a presentation one night and they came there on their own and I told them are they interested in Galaxy and they said, yes.

I said, okay, I know someone by the name of Arty Shevack who would sponsor them in if they wanted to join, that he could sponsor them.

So that night when Arty Shevack came to this presentation in Brooklyn, I told him there are two brothers sitting over there and they would like to join Galaxy and I told them all about you and he said, good. That is very good.

He said if they join up this will go towards your position to become a field manager into Galaxy.

Q And these two brothers did subsequently join?

A Yes.

Q Did Mr. Shevack tell you after they joined that you earned money in Galaxy?

A Yes.

Q How much money did he tell you you earned from these two brothers who joined Galaxy?

A $1,000.

Q Did he give you the money?

A No.

Q Did you ask him for the money?

A I asked him, why don't you give me the money so I can give it to Galaxy and he said, what I did already, the profit from your commission, I already turned it in to Galaxy already with your check.

He said don't worry about it, I already turned it into your position.

Q Did Mr. Shevack say that you were now -- withdrawn.

Did Mr. Shevack give you any amount that was now in your name towards the purchase of field manager position?

MR. GOIDEL: I would like that question re-frained. I don't even understand the question.

MR. GARMANSKY: I will rephrase it.

Q Did Mr. Shevack tell you how much money was paid into Galaxy on behalf of yourself for the purchase of a field manager position?

A $1,500.

Q Did Mr. Shevack tell you how much more money you owed for the purchase of the field manager position?

A $500.

Q And you have testified that your cousin Mr. James subsequently joined Galaxy?

A He joined afterwards, after the two brothers joined.

Q Did you have any discussions with Mr. Shevack about the commission from Mr. James' investment in Galaxy?

A Well, when Mr. James joined I said to him, okay, Mr. James, he joined up to Galaxy and that is my $2,000 towards my commission.

When do I get my badge and my number and my contract and he said I already gave you a contract and I said but the contract is supposed to have a number on it, stating how many people are into Galaxy and this contract you said you gave me has no number on it and he said, oh, that is right.

He said to me in a couple of days he will get everything. You will get the contract with your name and you will go to school for training to become fully a field manager.

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Q At what particular time was this?

A This was around either the early part of October or late part of August 1972.

Q Did Mr. Shevack give you any documents at all that reflected that you were in Galaxy?

A The only documents he gave me was -- no, as a matter of fact he didn't. The only documents I got was at the Step-Up Meeting I went to when they gave me the booklet about Galaxy. That was the only document I got from Mr. Shevack.

Q A booklet?

A Yes.

Q Mr. McLean, do you recognize Plaintiff's Exhibit 4 in Evidence?

A Yes, I do. This is a booklet they gave at the Step-Up Meeting on Sunday.

Q Mr. McLean, did you subsequently receive a contract and your badge and field manager's number from Mr. Shevack?

A No.

Q Did you ask him about this?

A I kept asking him every time I saw him. I said where is my badge and all my papers that belong to me that show I am in Galaxy, because at this moment I knew I wasn't

into Galaxy. I was becoming worried. He said don't worry. Everything is O.K. I said I want all my papers now at this moment. He said O.K. Tomorrow you will get them. So I said I am not going to wait until tomorrow. I want -- I went and I told Mrs. Artie Lee what was taking place. You know, I gave Mr. Shevack so much money and as of now I want my papers and contract that belongs to me. She said O.K.

MR. GOIDEL: Objection to what Mrs. Artie Lee is alleged to have said, your Honor.

Q Mr. McLean, you said you were beginning to get worried, is that correct?

A Yes.

THE COURT: First, I would like to know did Mrs. Artie Lee hold a position with Galaxy?

THE WITNESS: I really don't know. Her husband is the president of the company.

THE COURT: I see. You knew that?

THE WITNESS: Yes, I knew that, right.

THE COURT: All right. Now, a little while ago you testified you earned $1500 in commissions, is that correct?

THE WITNESS: Yes.

THE COURT: And you already paid in $700?

THE WITNESS: Yes.

THE COURT: That was $2,200?

THE WITNESS: Yes.

THE COURT: That was $200 more than what a field manager should cost?

THE WITNESS: Yes.

THE COURT: Did you ever ask Mr. Shevack about that?

THE WITNESS: Yes, I did.

THE COURT: When did you do that?

THE WITNESS: That was a couple of days after I got the check from Household Finance. He said to me that the $200 I owed First National City Bank, which was in the amount of 15- or 200, around that area --

THE COURT: That was the balance?

THE WITNESS: Yes. Mr. Shevack told me he went over to First National City Bank and paid off the loan I had with what I had with First National City Bank.

THE COURT: Did you ever go to the First National City Bank and find out if that was so?

THE WITNESS: Yes, I did.

THE COURT: That is so?

THE WITNESS: It was paid off, yes.

THE COURT: All right.

Q Mr. McLean, you just testified you were worried, you didn't have your papers at this time, is that correct?

A Yes.

Q Would you please tell the Court your reason for being worried about not having the papers.

A The reason I was worried, a couple of field managers were saying --

MR. GOIDEL: Objection to any statement made by any field manager or alleged field managers.

THE COURT: What would be the purpose of this proof with respect to conversations with other field managers?

MR. GARMANSKY: Your Honor, I just asked the witness what his concern was at this time, why he was worried, why he didn't have necessary documentation reflecting the fact he was a field manager. And I am trying to elicit a response from the witness.

Q Mr. McLean, what was going to occur in Galaxy beginning on October 1, 1972?

A I think that was a time when they raised the price for the distributorship from five to seven and field manager from two to three thousand dollars.

Q Would you please tell the Court your concern

why you wanted your documentation?

A I wanted my documentation before the 1st of October so there would be no repercussions by saying instead of being in for $2,000 I have been in for $3,000. That's why I wanted my papers to show I am in Galaxy from the first of October.

Q You testified you told Mrs. Artie Lee concerning this situation --

A Yes, I did.

Q Did you explain to her what happened with Mr. Shevack and the commissions from the three individuals you introduced to Galaxy?

A I am not certain if I told her all the details.

THE COURT: Let me ask you this, after you mentioned this to Mrs. Lee, did you do anything else?

THE WITNESS: Mrs. Lee told me --

THE COURT: Not what Mrs. Lee told you.

THE WITNESS: No, I did not do anything else.

THE COURT: You did not?

THE WITNESS: That was the 31st of August at the big rally to raise the price from five to seven.

THE COURT: Maybe you mean the 30th of September?

THE WITNESS: Yes.

Q Mr. McLean, were there any meetings that you had with anyone concerning your getting the necessary documentation to join Galaxy?

A I don't understand any meetings.

Q Did you explain your situation in Galaxy to anyone other than Mrs. Lee?

A No.

Q Do you know whether or not Mr. Shevack was asked to explain what happened vis a vis your joining Galaxy?

MR. GOIDEL: Objection, your Honor.

THE COURT: It calls for hearsay. First of all, did you get this documentation, the papers?

THE WITNESS: Yes.

THE COURT: Before October 1st?

THE WITNESS: I got them after October 1st.

THE COURT: You got them after October 1st?

THE WITNESS: Yes.

THE COURT: You did get them?

THE WITNESS: Yes.

THE COURT: From whom did you get them?

THE WITNESS: From Galaxy company.

Q Mr. McLean, did you have any conversations with Mr. Charles Horowitz about the necessary documentation?

A Yes.

Q Would you please tell us what he said and what did you say?

A This is when I told Mrs. Artie Lee about the situation. She told me --

MR. GOIDEL: Objection.

THE COURT: It may seem difficult to understand but my question was what did you do after that and you said you didn't do anything. But apparently you did speak to Mr. Horowitz.

THE WITNESS: Yes.

THE COURT: That is what --

THE WITNESS: Mr. Horowitz asked me -- and Mr. Ralph Avni called Mr. Shevack into their office that night and Mr. Horowitz said to Mr. Shevack --

MR. GOIDEL: Objection unless the witness establishes he was present.

THE COURT: Were you present?

THE WITNESS: I was. Mr. Horowitz said to Mr. Shevack there seems to be a problem here with you and Mr. McLean. So Mr. Horowitz said to me, Mr. McLean will you give me your impression of what took place here. So I told Mr. Horowitz that I gave Artie Shevack a check for $700. Mr. Shevack told me that he would take this check for $700 and deposit it with

Galaxy Corporation and on my behalf I could get -- if I get three more customers to join Galaxy which would be my total to $2,000, I would be a manager for the Galaxy Corporation. I already got my three customers into Galaxy and as of this date, September 20th, I have not received any contract, my documentation, nothing from Galaxy Food Corporation.

Mr. Horowitz asked Artie Shevack is that it and Mr. Shevack said that is right. So Mr. Horowitz said to Mr. Shevack, come into my office, I want to talk to you. Mr. Horowitz and Ralph Avni and Mr. Shevack went into the office and while I stayed outside in the waiting room in about 20 or 25 minutes the three of them appeared from the office. Mr. Horowitz said to me you are both right. Mr. McLean, you are a field manager with Galaxy. As of now, take my word for it, you are a Galaxy field manager. Come next Sunday, come into the office and I will give you your contract and all your documents that you are a field manager. He said we don't want no one to feel that we are doing any harm in the company. We will take your suggestion and agree that you are entitled to become a field manager with Galaxy Corporation.

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SEC

DIRECT EXAMINATION

BY MR. GARMANSKY: (Cont.)

MR. GARMANSKY: I would like to mark Plaintiff's Exhibit 33, this document.

THE CLERK: So marked, Plaintiff's Exhibit 33 for identification. A one-page document.

xxx

(So marked.)

BY MR. GARMANSKY:

Q Mr. McLean, do you recognize Plaintiff's Exhibit 33?

A YEs, I do.

Q Does your signature appear on Plaintiff's Exhibit 33?

A Yes.

Q Is this the contract that Mr. Hurwitz gave to you?

A Yes.

MR. GARMANSKY: I would like to offer into evidence Plaintiff's Exhibit 33.

MR. GOIDEL: I have no objection, your Honor.

THE CLERK: May I have it, please?

THE COURT: Mark it in evidence.

THE CLERK: Yes, your Honor.

So marked Plaintiff's Exhibit 33 in evidence.

(So marked.)

BY MR. GARMANSKY:

Q Mr. McLean, did you attend any other presentation meeting similar to the first meeting after you joined Galaxy?

A Yes.

Q Approximately how many?

A I would say about -- probably eight to ten meetings.

Q Was this meeting run similar to the first meeting you testified to?

A Yes.

Q Did you earn any money in Galaxy?

A No. I didn't earn nothing.

MR. GOIDEL: Objection, he obviously earned something, he already testified to it, your Honor.

The fact he may not have chosen to take the proceeds and used the proceeds, allocate to something--

THE COURT: I understand your objection, perhaps I took the question to mean over and above $1500.

BY MR. GARMANSKY:

Q Mr. McLean, did you earn anything over and above the $1500 concerning the three people you sponsored?

A No, I did not.

Q Mr. McLean, did you know -- strike that.

Do you know who Arty Lee is?

A Yes.

Q Do you know his position in Galaxy?

A Yes.

Q Do you know how Mr. Lee earned money in Galaxy?

A Yes, Mr. Lee, himself, also was earning money from Galaxy by selling franchises, and I don't know for a fact but I was told that Mr. Lee was also receiving a commission from Galaxy Foods, salary from Galaxy Foods.

Q Who told you that?

A This is what I hear from all the distributors.

Q Mr. McLean, did you ever hear anyone from the Galaxy management, the ex cutive board or Board of Directors ever tell you how they were paid in Galaxy?

A No.

Q Did you ever attend any training sessions in Galaxy?

A Yes.

Q Who were your investors?

A Thadius Stenson.

Q Anyone else?

A Mr. George Padilla. Mr. -- not Ralph Martin,

Walter Martin.

Q When did you attend the training session?

A Soon after I got my contract from Galaxy.

Q That would be approximately October 1972?

A Right.

Q Would you please tell us what was taught at these training sessions?

A We were taught how to approach customers, prospecting in the streets. Like you walk to someone and say, "Sir, how would you like to earn $50,000 a year?"

And if the person said to you, "What will I have to do?" just hand a card and say, "We're having a presentation, come down tonight and we'll show you how to make this type of money."

And also whenever we start distributing the merchandise, we were told we would get commissions from all the customers, from Galaxy Food.

(continued next page.)

DIRECT EXAMINATION

BY MR. GARMANSKY (Cont'd):

Q Did Galaxy ever start to retail food, home --

A I didn't hear --

Q Did Galaxy ever start to deliver food?

A Yes.

Q Do you know when?

A I would say around February or March of '73.

Q Did you ever acquire any customers to order food?

A Yes.

Q Did you earn any commission?

A No.

Q Would you please explain to the Court what circumstances or what occurred concerning your customers?

A Well, I had about 18 to 21 customers. And when I said -- en I approached Mark Glazer who was in charge of operation. Retail, I think, at that time, I said to Mark Glazer, "How come, I have 18 to 21 customers, and I have not received a check for nothing?"

He said to me, "The reason you probably didn't get ..nothing. from these customers is because your commission did not exceed over $750. That is why."

"How can it not if I have 18 to 21 customers?"

He said, "It shows in the records in the books, your commission did not reach the maximum of $750. That's why you did not get no money from the sale."

THE COURT: Do you mean the minimum?

THE WITNESS: Yes.

THE COURT: You said the minimum?

THE WITNESS: The minimum $750.

THE COURT: $750?

THE WITNESS: Yes.

BY MR. GARELSKY:

Q Mr. McLean, at the Galaxy meetings you attended and also the training sessions, did you ever hear what Mr. Glazer told you concerning the commissions on good?

A Yes. Mr. Glazer said that Galaxy will distribute an equal -- each individual, field managersand distributors, will receive the same amount of customers from Galaxy.

MR. GARELSKY: I think the witness misunderstood.

Q Listen to my question.

What Mr. Glazer told you about the commission, that you had to have a minimum of $750, were you ever told that at the meeting or training session?

A No, we was not told this.

Q Mr. McLean, what else were you instructed at

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the training session you attended, do you recall?

A Yes. Like how to cater to a prospect, if you see a prospect that is interested in joining Galaxy, you should take him out to dinner, so forth, to -- try to get the money if you don't have it. Take him to the banks, two or three banks the same day to get the loan so they can join Galaxy.

Q Do you recall who told this to you?

A Yes, Ralph Martin.

Q Anyone else?

A Not Ralph Martin, Walter Martin.

Q Anyone else?

A And Steven Roth.

Q Anyone else?

A I don't remember anyone else in particular now.

MR. GARBARSKY: No further questions.

THE COURT: You mentioned you obtained 18 to 21 customers. Did you ever inquire how much those customers had ordered in food delivery?

THE WITNESS: Yes, I inquired and they told me what the customers ordered was -- did not reach the amount for me to get any money from Galaxy. They had anything below the $750 would go toward Galaxy pocket but I wouldn't get it.

MR. GOIELL: May we have a five-minute recess? I would like to check on something.

THE COURT: Yes. Make it 10 minutes.

(Recess.)

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THE CLERK: Document marked for identification as Plaintiff's Exhibit 34.

BY MR. GARMANSKY:

Q I show you what has been marked Plaintiff's Exhibit 34.

Do you recognize it?

A Yes.

Q How do you receive -- or, how did you receive that document marked Plaintiff's Exhibit 34?

A From Mr. Artie Shevack.

Q When did Mr. Shevack give it to you?

A The second time I saw him.

Q Where did he give it to you?

A On my job.

Q Now, at the time you joined Galaxy --

MR. GARMANSKY: I would like to offer into evidence what has been marked Plaintiff's Exhibit 34.

MR. GOIDEL: No objection.

MR. PADILLA: No objection.

THE CLERK: So marked.

BY MR. GARMANSKY:

Q Now, at the time you joined Galaxy, did you feel you had a guaranteed investment?

MR. GOIDEL: Objection as to what he felt.

THE COURT: Yes. Sustained.

BY MR. GARMANSKY:

Q Mr. McLean, did you have any conversations with Mr. Shevack concerning what has been marked Plaintiff's Exhibit 34?

A Yes.

Q Please tell us what you said to him and what he said to you.

A I said to Mr. Shevack, if I invest two thousand dollars with Galaxy Foods and if for no reason at all I see that Galaxy is not functioning to my expectation, can I get my money back.

Mr. Shevack told me, he said, after being in Galaxy for a period of six months, I am not sure whether it was six months or a year, that any money you invested with Galaxy, for instance if I invested two thousand dollars, and if I sponser a field manager, I will get back for my two thousand dollars, fifteen hundred dollars.

The other five hundred dollars would go towards Galaxy.

If I invest two thousand dollars and I didn't sponser no one into Galaxy, I get my entire two thousand dollars.

MR. GARMANSKY: Thank you, Mr. McLean.

No further questions.

CROSS-EXAMINATION

BY MR. GOIDEL:

Q Would you describe the circumstances under which you and the representatives of the SEC first began to confer on this matter?

A Well, I first heard from the SEC, I would say about four weeks ago. I got a phone call on the job. I wasn't there at the moment and the person left a message for me to call the number that they left.

When I returned the call a Miss Williams answered the phone and said this is the SEC and they are investigating Galaxy Foods, that I was one of the investors in Galaxy and they would like me to appear as a witness in court.

Q Did you make an appointment at that time, sir, to go to the offices of the SEC?

A Yes, sir. I told her, she said, could I come in the following day, which was a Friday.

I said I could make it tonight, Thursday night, at seven o'clock and I made the appointment at seven o'clock.

Q When you went there, did you speak with representatives of the Commission?

A Yes.

Q And how long were you there?

A Approximately two and a half hours.

Q Were you advised that you were under investigation?

A Not to my knowledge.

Q Did anyone advise you concerning the law as to what might or might not constitute a violation of law?

A I do not recall.

Q Well, now, for example, did anyone advise you that the making of an application to a bank containing false information might be a violation of law?

A Yes, that they did.

Q When, in the conversation that took two and a half hours, were you advised of this?

A I would say in the beginning of the conversation when I told them I made an application at the bank and signed the application.

Q You work at a bank; is that right?

A Yes.

Q You work for that bank for how long?

A Four years, December 21.

Q Prior to meeting with the representatives of the SEC, were you aware of the fact that the making of a false application for a loan to a bank might be a violation of law?

A Yes.

Q Not withstanding that knowledge, you testified

here today that you did prepare an application for a loan containing false information?

A True.

Q Had you ever previous to that occasion made an application to a bank for a loan wherein you stated false facts?

A No, never.

Q That was the first instance?

A Right.

Q Did you ever go to the bank or to the lending institution, that is, the finance company from which you finally borrowed the funds and advise them that your application was false?

A I did not get that question.

Q After having made this false application, knowing that making it might constitute a violation of law, did you ever return to the finance company to clear the record, to advise them that you had in fact made a false application?

A No.

Q Now, sir, the facts on this application that you submitted to the finance company, did they include the fact that you had at that time outstanding loans?

A Yes.

Q Did you announce to the finance company the amount of those outstanding loans?

A Yes.

Q Do you recall what, if anything, you set forth?

A I do not recall.

Q Do you recall how much was outstanding at that time?

A Well, the only one I owed was the First National City Bank.

Q Do you know how much was outstanding at that time?

A Around a hundred fifty, two hundred dollars.

Q Did you ever communicate that fact, that one hundred fifty to two hundred dollar fact to anyone?

A I think I did, to Household Finance.

Q To anyone else at all?

A Artie Shevack.

Q When did you tell Mr. Shevack?

A The first time he asked me if I owe any bank money.

Q You told him what?

A I told him I owe First National City Bank and I had a loan and still owed them money.

Q Did you tell him the amount?

A I think I did.

Q Are you certain you did?

A I am certain, yes.

Q What did you say to him?

A I said, I owe First National City Bank, I have an outstanding loan there.

Q Is that all you said to him?

A Yes.

Q Did you give him a figure?

A The balance, one hundred fifty to two hundred dollars. I don't recall the exact amount.

Q Did you communicate any figure or figures to Mr. Shevack?

A Yes.

Q At that first meeting?

A On the way home in the car, yes.

Q That was in what month?

A I would say from July to August.

Q Was it July or was it August?

A I cannot remember.

Q When did Mr. Shevack go to the bank in your behalf to pay off the First National City Bank loan?

A When we got the check from Household Finance.

Q When was that?

A I would say the latter part of August.

Q Did you ascertain at that time whether the

amount you owed was one hundred fifty or one hundred seventy-five or two hundred dollars?

A Yes. I knew because I had my bank book and the bank book showed the amount I owed.

Q Did you give Mr. Shevack that book?

A Yes, I gave him the payment book.

Q And you asked him to deposit that check with the First National City Bank?

A I didn't ask him that. He told me he was going to take care of the loan I owed to the National City Bank.

Q And he did that?

A Yes.

Q You checked that?

A Yes.

Q You were speaking about a meeting between you and certain representatives of Galaxy with regard to your contract which you wanted to receive prior to the first of October?

A Yes.

Q Do you recall saying that Mr. Hurwitz, I believe it was, said something to the effect, after a meeting in a room, you are both right?

A Yes.

Q Did Mr. Hurwitz ever tell you that Mr. Shevack

had not left the money with Galaxy Foods in payment of your obligation?

A He did not tell me anything like that, no.

Q I want to clear the record on this point, sir.

Are we to infer from what you said before that Mr. Shevack took monies belonging to you and used them for his own purpose?

MR. GARMANSKY: Objection. The question is not proper.

If Mr. Goidel wants to infer anything, let him ask the witness proper questions.

Let him ask him outright.

MR. LERNER: It calls for a conclusion.

MR. GOIDEL: I am asking whether he wishes to draw that inference. That is a proper question.

There has been an awful lot of testimony with regard to his franchise and whether or not it has been paid for and certain implications that Mr. Shevack pirated or stole or in some other way didn't deliver monies that were owing and due.

MR. GARMANSKY: This is not a proper question for the witness.

We had testimony from Mr. Lieberman and asked him on the books and records that he looked through did

it show five hundred dollars or any amount that was paid for Mr. McLean as a field manager position. The books and records are the best evidence.

THE COURT: That is a matter of argument.

The present problem is whether this kind of question on cross-examination is permissible.

MR. LERNER: Ask him if he knows whether the money was used for illegal purposes or was converted for his own use. If he doesn't know --

MR. GOIDEL: If he doesn't know that, he shouldn't have been asked the question on direct.

I have a right to ask this witness what he wants this Court to infer from his answers.

MR. LERNER: That is ridiculous.

THE COURT: No, it is not ridiculous on cross-examination.

I can assure you the basic question is the form of it in terms of what it is related to.

You haven't asked this witness whether, insofar as I know, this witness has ever claimed that the monies were not deposited. He made some point of the fact that despite repeated questions concerning his documentation he finally felt it necessary to go to someone higher up to get that matter straightened out.

Now, if you want to inquire whether that was the belief he had, I will permit that.

On the basis of his testimony, was he acting on the belief that something crooked was going on?

BY MR. GOIDEL:

Q You just heard his Honor's comment.

Were you of the belief that Mr. Shevack was acting improperly towards you as relates to your money?

A Well, in the beginning I had no -- I believed in Mr. Shevack in the beginning and I had confidence in him, but this was going on for a period of time and I see that I wasn't going nowhere and it led me to believe there was some improper conduct going on towards my affair.

Q And after you received your contract, were you of the same belief?

A I still felt that something was crooked and was going on when I got my contract. I still felt something was wrong.

Q Did you believe that Mr. Shevack took your money and used it for his own purposes?

A In my estimation I came to that conclusion later on.

Q You did come to that conclusion?

A Yes.

Q I take it that did not well-dispose you towards Mr. Shevack?

You didn't feel very kindly towards him?

A Well, we had no -- we shook hands on the matter and we were friendly after that. We still had a good relationship.

Q I thought you said some time later you began to believe that there was some sort of a crooked deal there?

A I didn't trust him like I did in the beginning.

Q How long did you remain with Galaxy?

A Until they went out of business.

Q Was Shevack still in the organization at that time?

A No.

Q Do you know how Mr. Shevack left the organization?

A Well, I was told that; I got a phone call one evening and I was told --

Q First, who made the phone call?

A Ralph Martin.

Q What did Mr. Martin say to you?

A Ralph Martin said to me that Mr. Shevack had sold all his interest in Galaxy Foods and as of now I am under the property of Ralph Martin, he is my distributor.

THE COURT: When did you recall that call having

come in?

THE WITNESS: I don't remember.

BY MR. GOIDEL:

Q Let me ask you this question, sir: you cannot fix the time?

A No.

Q Can you fix the period of the year, fall, winter, summer or spring?

A It may be the spring.

Q What year?

A '73.

Q What were your thoughts concerning the operation of Galaxy Foods at that time?

A I feel, or felt, that I could do good in Galaxy, that I could have a better life-style and a living for me and my family with Galaxy Corporation.

Q I think you said as of that time you had already started taking orders for food?

A Right.

Q At that time you were advised that you were not entitled to commissions?

A That was afterwards, that was much after they told us about a commission.

Q Didn't you inquire about your right to commission

when you first started selling food?

A Yes, I did.

Q And what was the answer given? Did you make the inquiry of an officer of Galaxy Foods?

A At the time when I inquired about the distribution of foods we were told that at the moment, all the customers that you acquire will be yours and we would be getting no commission at the present time, that there will be no commission given to us at that time.

A few months after the distributors and the field managers got together and they said why should we go out there getting customers and Galaxy is getting all the benefit and we are not getting any commission at all so Galaxy decided to give us a commission on the orders that we were getting.

Q When was it that you received this commission?

MR. GARMANSKY: Objection.

Now, the witness testified he never received a commission.

MR. GOIDEL: Unless I misunderstood his last answer.

MR. LERNER: He testified on direct he didn't receive a commission.

(continued on next page)

Q Did you or did you not receive a commission?

A We did not receive one.

Q You were promised you would be getting a commission but you didn't receive one?

A Right.

Q When was that?

A That was the summer, spring or summer-time.

Q The same period of time that you had heard that Mr. Shevack had resigned from the corporation?

A He had left earlier from the corporation, sir.

Q How much earlier?

A I would say the month of February.

Q Now, this took place some time in April or May?

A Around that time, yes.

Q Did you try to resign from the corporation at that time?

A Never tried.

Q Why not?

A Because I still felt I could make it with Galaxy.

Q You still felt that it was a corporation that would honor its word?

A Right.

Q Did you continue to sell food?

A Yes.

Q Up until the end?

A Up to when they stopped selling distributors.

Q How many customers did you acquire?

A Eighteen or twenty.

Q That is from the moment you stepped foot in to the corporation as a franchisee to the end?

A Yes.

Q Were they buying food to the end?

A Until the moment they stopped; yes.

Q And nowhere throughout that period of time, knowing that your investment supposedly was guaranteed, did you try to sell out to the corporation?

A Never tried, no.

Q Well then, you don't know whether they would have honored that obligation?

MR. GARMANSKY: Objection.

Q Do you know whether they would honor that obligation?

A I knew what they told me, it would be honored, that once you leave the corporation you get your money back.

Q Were you a member of an association known as the Distributors' Association?

A No.

Q Were you a member of an organization known as

the Distributors' Council?

A No.

Q Did you participate in any meetings of distributors alone?

A No.

Q You mentioned something about, I think, Mr. Shevack showing you a check for six thousand dollars.

MR. GARMANSKY: Objection, that is not what he said.

THE WITNESS: I did not say that.

BY MR. GOIDEL:

Q What did you say?

A I said he showed me a check for three thousand dollars and at the Step-Up Meeting one Sunday they gave him a check for six thousand dollars. That is what I said.

Q Somebody gave Mr. Shevack a check for six thousand dollars?

A Yes.

Q Do you know who?

A I don't recall who was paying that day, it could be Artie Lee or Bruce Katz or Steven Roth, whoever was paying that Sunday.

Q Did Mr. Shevack show you that check or did you see it?

A Yes. They called out the figures at the meeting. They said, if they call your name, they say, Melvin McLean made two thousand dollars or three thousand dollars, whatever it might be.

Q Did you see that check?

A Yes.

Q That check said six thousand dollars?

A Yes.

Q I think you said Mr. Shevack said that is what he earned in one week?

A Yes.

Q That check was a check of Galaxy?

A Yes.

Q When was it that you purport to have seen a check for six thousand dollars?

A I don't remember.

Q What month?

A It could be the summer of '72.

Q You could not be mistaken about the amount of that check, could you?

A No.

Q And somebody stood in front of the room and said Mr. Shevack just earned a check for six thousand dollars?

A Yes.

Q You saw that check?

A Yes.

Q And that check said Galaxy Foods Incorporated on it?

A Yes.

Q You never received a check from Galaxy Foods?

A Never.

Q So the only checks of Galaxy Foods that you ever saw were checks that were made out to others?

A Right.

Q What color was that check?

A Kind of yellowish.

MR. GOIDEL: I believe the Securities Exchange Commission is in possession of all checks of Galaxy Foods. May I call upon them to produce all checks encompassing the period of this witness' testimony?

MR. GARMANSKY: What is the relevance of that?

MR. GOIDEL: This is cross and this is going towards credibility of this witness.

THE COURT: It may. Do you have any checks?

MR. GARMANSKY: Can the checks be limited?

MR. GOIDEL: Any checks made out to Mr. Shevack.

MR. GARMANSKY: For this period of time?

MR. GOIDEL: Yes.

They do not have to produce today, but at some other time so we can get on here.

MR. LERNER: We only have the checks turned over to us by Galaxy Foods so that if there are any missing, we cannot be held responsible.

BY MR. GOIDEL:

Q Now, when Mr. Shevack first met you he said how would you like to earn fifty thousand dollars, right?

A Yes.

Q You liked the idea?

A Naturally.

Q And you met him at a hotel that evening?

A Yes.

Q To attend a meeting?

A Right.

Q And there was a blackboard there and I think you said the figure of fifty or sixty thousand dollars appeared on the blackboard?

A Forty-eight to fifty.

Q I think it was explained to you, you started to give us some sort of an analysis of how you concluded you could earn forty-eight to fifty thousand dollars by saying something to the effect of if you take two customers and they buy so much food for a period of time, one year, and multiply

that by some other factor you come up with the figure of forty-eight to fifty thousand?

A Right.

Q Did they limit it to two people, did they say, two people, forty-eight to fifty thousand dollars?

A Right.

Q Just by selling food to two people?

A This is what they felt, or they illustrated on the blackboard.

Q Now let me ask you this, did you believe at that time that two people spent forty-eight thousand, between two of them, to purchase food for one year?

A Not in my estimation. I told them this.

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Q Well, if two people do not spend $48,000 to feed themselves in a one-year period, obviously you did not feel that you could earn $48,000 from the sale of food to those people, is that correct?

A Yes.

Q Notwithstanding your understanding, you decided to invest in this corporation?

A I had that matter cleared up by Mr. Shevack.

Q How did Mr. Shevack clear up that matter?

A He told me with two sales working for you you could make that kind of money.

Q Yes? How much food would those two salesmen have to sell?

A I don't remember what the figures were.

Q Give us an estimate, if you remember.

A I don't remember.

Q What rate of commission would you earn, one percent, two, five percent, ten percent, what?

A I believe it was a matter of five percent, something like that.

Q Five percent?

A Yes.

Q So that $48,000 would represent five percent

of some greater figure which would represent in turn the amount of food that would have to be sold, is that correct?

MR. GARMANSKY: Objection, your Honor.

Mr. Goidel has about four questions there. I didn't understand the question. I would like it repeated or --

MR. GOIDEL: I will repeat it.

Q That $48,000 that you earned would represent five percent of a greater figure which in turn represented the sale of food?

A Two salesmen working for you, that is what he told me, with two salesmen working for you this will be your return from the two salesmen.

Q Sir, I refer you to Plaintiff's Exhibit 4 in Evidence, have you ever seen that document before?

A Yes.

Q Did you ever see this chart before, the chart being the page opposite that page in the book that reads Part 2?

A Yes.

Q Did you ever see those figures that appear on that chart that we are referring to, written on the blackboard?

A I think so.

Q Did you see those figures appear on the blackboard on the first occasion when you went to the hotel?

A (No response.)

Q And they were discussing how one could earn monies?

A Yes.

Q Did you understand when those figures were up on the blackboard what they represented?

A Yes.

Q Now, sir, I ask you this question, ignoring for the moment whether the statements were true or false, did you understand the statements relative to the operation of this business that were made to you by the representatives of Galaxy Food?

A At that time, no. I didn't fully understand.

Q Before you signed the contract, did you understand it?

A Yes.

Q Notwithstanding any doubts you would have had and understanding it, you executed the contract, true?

A True.

MR. GARMANSKY: Can we have a time? Which contract was this?

MR. GOIDEL: His contract. There is only one.

MR. GARMANSKY: We had testimony that he signed

two contracts, one in Mr. Shevack's car --

MR. GOIDEL: O.K.

THE COURT: Let's clear it up.

MR. GOIDEL: I will try to clear it up.

Q Which contract are we talking about, sir, the first contract or the second contract?

A The second contract.

Q The second contract, by that time you feel you fully understood the operation of this business?

A Yes.

Q You signed the first contract, did you not?

A Yes.

Q Did you fully understand the business at that time?

A Yes.

Q You brought three people into this business?

A Yes.

Q One was a relative, I believe?

A Yes.

Q And the other two were brothers who resided somewhere other than here, is that correct?

A Yes.

Q Or did they reside here?

A They live in Brooklyn.

Q Your relative lives where?

A Just moved to Florida.

Q Where did he live?

A Brooklyn.

Q One was a $5,000 investor and another -- the other two were $2,000 investors?

A Yes.

Q Is that correct?

A Yes.

Q How much money were you to realize on a $2,000 investment?

A I don't get you.

Q How much money, how much commission would you obtain on a $2,000 investment?

A $500.

Q How much money would you obtain on the sale of a $5,000 franchise?

A I think it was $1,000.

Q That would represent on those three sales, not the amount that you previously said, but really $2,000, true?

A For a field manager?

Q Yes.

A If you are bringing in three people you get

$500.

Q Isn't it a fact that the commission on the sale of $2,000 franchise for a field manager is $500?

A Yes.

Q Two of those would be $1,000?

A Yes.

Q Is it not true the sale of a $500,000 franchise would yield the field manager $1,000 in commission?

A No, the same $500.

Q Irrespective of whether you sold a $5,000 or $2,000 franchise?

A Yes, same thing.

Q At least that's howyou understood it?

A Yes. For a field manager if you bring in a field manager to the company, it's $500. If you bring in a distributor to the company you get the same $500.

Q O.K. That is fine. You understood this?

A Yes.

Q Sir, let me ask you this, with the exception for the Commission on Food, were any monies rightfully belonging to you withheld from you?

A I didn't get that.

Q With the exception of the commission on the sale of food, were any monies rightfully belonging to you

withheld from you by anyone in Galaxy?

A I would say no because -- I would say no.

Q How did these investors that you brought into the business pay for their franchise?

A I don't know. Mr. Shevack, he is the one that took care of that.

Q You didn't speak with him?

A I spoke to them when they first came down to the business, when they were interested in joining.

Q Didn't they discuss with you how they were going to pay for their investment?

A No, Mr. Shevack handled everything.

Q Weren't you interested enough to be with Mr. Shevack when Mr. Shevack spoke to your customers?

A He was going to their houses and doing all the transactions with them. I wasn't included in this.

Q Didn't you feel you wanted to attend a meeting at which Mr. Shevack was going to speak to a person who potentially could yield money to you?

A This is what Mr. Shevack told me. He would handle it. Just get him customers and join and from here on in he was taking care of it.

Q I thought you testified that you were told just get the customers and get them to an opportunity meeting?

A Yes.

Q Are you saying now Mr. Shevack did not bring them to an opportunity meeting, that he went to their homes to sell to them?

A No, they went to the opportunity meeting

Q Were you at the opportunity meetings?

A Yes.

Q So that you were there when they were present?

A Yes.

Q And after the meeting, did Mr. Shevack talk to these people?

A Yes.

Q Weren't you there?

A No.

Q You went home?

A I went home.

Q You didn't bother to hang around long enough?

A No, I told him these are two brothers interested in joining Galaxy.

Q Why did you go to the meeting?

A Why?

Q Yes.

A Just to be at the meeting.

Q Do you attend all the meetings?

A Not all.

Q Only those to which you brought someone?

A Yes.

Q Isn't that true?

A Yes.

Q Having brought these people and attending the meetings you weren't interested enough to wait the extra ten minutes to find out what was said to them?

MR. GARMANSKY: Objection.

MR. GOIDEL: Is that a fact?

THE COURT: I sustain that objection. I think it is argumentative and I think it is improper.

Q Very well, sir, when did you first learn that the brothers had purchased the franchise?

A The same day they purchased it. That same evening.

Q What time of the day did they make the purchas

A About this time of day.

Q This time of day? 12:25, roughly?

A Yes.

Q And you learned they had made the purchase at what time?

A At the meeting that night.

Q In other words, you attended that opportunity

meeting?

A Yes.

Q With them?

A No, I had another guest that night. I brought someone that night.

Q Aside from the three people whom you sold franchises to, were there others that you brought to meetings?

A Yes.

Q Others that you tried to sell?

A Yes.

Q How many?

A About four.

Q Four?

A Yes.

Q And they did not purchase?

A No.

Q Did these people ever discuss with you, any of the seven -- three, or the four -- did they ever discuss with you how they would potentially pay for the franchise if they bought it?

A They weren't interested.

Q But the three who were interested, you never discussed with them how they would pay for it?

A No.

Q After having paid for it, did they ever tell you how they paid for it?

A They never did either, no.

Q Did you ever see these people again?

A Yes.

Q Did you ever inquire of them? Were you ever curious as to where they got the money?

A No.

Q Well, did you ever say to them, if you buy in, you shouldn't go to a bank and borrow money --

MR. GARMANSKY: Objection, your Honor.

A I never mentioned that to anybody.

MR. GARMANSKY: I want the answer stricken.

THE COURT: He said he never did it.

Q You say you attended opportunity meetings?

A Excuse me, could I have a glass of water?

Q Sure.

(Pause.)

Q You say you attended opportunity meetings at which time discussions were had with regard to means of financing the purchase of a franchise?

A Yes.

Q What was said at the opportunity meeting with regard to the means of purchasing a franchise?

MR. GARMANSKY: I object to the question. I don't believe the witness testified to opportunity meetings.

A Not opportunity meetings.

Q I am sorry, I thought you previously said opportunity meetings.

A No.

Q What type?

A Meetings among the distributors and field managers.

Q What were those meetings called?

A Training sessions and after training sessions.

Q YOu were educated at the training sessions as to what to say to a prospective investor as relates to how he would obtain the money, is that correct?

A Right.

Q Or how he could obtain money, is that right?

A Yes.

Q Did you ever stand up at those meetings and say, Hey, that is against the law?

A No.

Q But you knew it was against the law?

A What, borrowing money?

Q To make an investment of this type and making

a false application to a bank.

MR. GARMANSKY: Objection, your Honor. This is double question?

MR. GOIDEL: It is one question. Whether those combinations of facts were known to him to be a violation of law.

CHE COURT: What combination of facts?

MR. GOIDEL: Making application to a bank for an investment in Galaxy and having that allegation bear false facts.

THE COURT: He answered he never told anybody to go to a bank and borrow money. You are beating a dead horse.

MR. GOIDEL: I am not beating a dead horse and this is cross-examination.

THE COURT: I understand it is cross-examination. You have been allowed to proceed with great liberality. I am simply saying that in the interest of focusing on something that really matters here, we ought to pay some attention to the fact that we talked about a time schedule yesterday and we ought to live up to it. The case will never end.

MR. GOIDEL: I can only say this witness was on the stand for approximately an hour and a half --

THE COURT: No, less than an hour. No, from 10:10 until 11:25, an hour and a quarter.

MR. GOIDEL: I didn't bring out the original fact --

THE COURT: I understand. I am simply saying he has already pointed out he never told anyone, anyone, as I understand the testimony, to go to a bank and borrow money.

Q Let me ask you, were you ever physically present with Artie Shevack when he interviewed or spoke with any one of your three franchisees?

A When he spoke to them how?

Q About anything.

A Yes, the night when they came to get us that night, he shook hands, and he did all the talking.

Q Other than that, were you ever present when he spoke to any one of these three purchasers?

A No, no.

Q When did you introduce them to Mr. Shevack?

A The night of the presentation.

Q That was the first time?

A Yes.

Q When you went to the bank to make the loan, you say Mr. Shevack was with you?

A Yes.

Q Who spoke with the bank officer?

A I did.

Q When is the last time you tried to sell a franchise?

A That I tried to sell a franchise?

Q Yes.

A I never tried to sell a franchise.

Q Or a field manager's position or distributor's position. When was the last time you tried to sell either of them?

A I would say around November of '72.

Q That was after the company had not paid you commissions for the sale of food; is that correct?

MR. GARMANSKY: Objection, your Honor.

Q Was it after --

MR. GARMANSKY: This has been asked and answered over and over again. The witness testified the first time they did not pay him the commission on the food.

MR.GOIDEL: I have on cross-examination, with all due respect, the right to repeat a question, the right to connect up aspects of testimony, and the right to test the credibility and accuracy of a witness' statement.

THE COURT: Yes, but the difficulty with this is the date he gave you doesn't gibe with the food program.

MR. GOIDEL: I understand.

Q Was that after they had already dishonored an obligation to pay you a commission?

THE COURT: That is a misleading question and I won't permit you to ask misleading questions.

Q Sir, were they in a retail operation at that time?

A What time was that?

Q November of 1972.

A I don't remember.

Q Sir, you say when you attended the opportunity meetings, there was cheering and applauding?

A Yes.

Q Where did you first hear the combination of those words?

A When I --

Q When did you first hear the use of those two words in combination, cheering and applauding?

MR. GARMANSKY: Your Honor, what is the relevancy of this?

THE COURT: Wait a minute. That is permissible.

Do you understand the question? He wants to know when you first heard those words cheering and applauding used.

THE WITNESS: The first time is when I mentioned it right here today.

Q When you mentioned it here today?

A Yes.

THE COURT: You had not previously heard those words used before you came to court?

THE WITNESS: Not in this case. In other situations but not pertaining to Galaxy.

THE COURT: Not pertaining to Galaxy?

THE WITNESS: No.

(Continued on next page.)

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CROSS-EXAMINATION

BY MR. GOIDEL: (Cont.)

Q You are certain, you never heard those two words used in connection with this litigation, "cheer and applaud"? Never heard those two words put together in that way and used in this litigation before you sat here and talked about it?

A Yes. Like this was instructed to us in the training session, like when you get someone in business, when you give a speech to get up and clap your hands.

Q I am using specific words, the words are "cheer and applaud" in that context, together, three words, "cheer and applaud"

Is your use of those words here today the first time that you have heard those three words together in that fashion?

A The first time?

Q Yes.

A No.

Q When was the first time in connection with this litigation, we are talking about?

A It could be in the training session.

Q It could be; but was it?

A I said it could be.

Q But was it?

Did Mr. Garmansky -- withdrawn. Did anyone at the Securities and Exchange Commission in talking to you, use that terminology in referring to Galaxy, "cheer and applaud"?

A No, sir.

MR. GOIDEL: No further questions of this witness, your Honor.

THE COURT: Mr. Padilla.

CROSS-EXAMINATION

BY MR. PADILLA:

Q Mr. McLean, you testified about -- that you did go to one of the business training schools. You did attend?

A Yes.

Q You did go to Galaxy Business Training School?

A Right.

Q You mentioned who the instructors were and I believe you mentioned Thadius Stenson, and Mr. Walter Martin, and George Padilla, myself?

A Yes.

Q Were there any other instructors at that session that you attended?

A There could be. I don't remember all that were

there. But the main characters were like you, Thadius and Walter Martin.

Q Do you remember how the training session was run, was it broken up into separate parts?

A I think so.

Q Do you remember what different parts it was, what the schedule looked like?

A I don't remember but I know for myself that there was an illustration, like approaching a party to buy a franchise. I took part as one and Marion took part as the other one.

Q That was part of the prospecting?

A Yes.

Q Was there also any other parts, parts in administration?

A I guess so.

Q Do you know -- did they teach you administration, how to maintain records?

A Yes.

Q Did you hear about warehousing?

A Yes.

Q Did they teach you about marketing?

A Yes.

Q Did they teach you about advertising?

A Right.

Q Did they teach you about computers?

A Yes.

Q And also I guess, they also taught you how to prospect and close sales, sales psychologically?

A Right.

MR. PADILLA: May I have this marked for identification.

THE CLERK: One-page document marked for identification as Defendant's Exhibit Q.

(So marked.)

BY MR. PADILLA:

Q I'd like you to look at this document. Does this look like, more or less, a training schedule?

MR. GARMANSKY: Objection.

THE COURT: Show it to him. Ask him if he has ever seen it before.

MR. PADILLA: He has never seen it that way before. Just the items.

THE COURT: Let him look at it.

Have you seen that piece of paper before/

THE WITNESS: Not like this.

THE COURT: Have you seen something like it?

THE WITNESS: No.

THE COURT: Now, you may ask him questions, if it, for instance, lists course or something of that sort, you may ask him.

You already mentioned marketing, computer, sales techniques, etcetera.

Is there something over and above that?

MR. PADILLA: Yes.

BY MR. PADILLA:

Q During your training class, were you also taught transportation? Was there a class on methods of transportation that Galaxy would use during this operation?

A I don't follow what you mean, transportation?

Q Did they -- were you instructed on transportation, in other words, the methods of transportation Galaxy would use to operate its food delivery program? A class on transportation, was that given?

A No, I don't think.

Q You don't think you were given that class?

A No.

Q Were you given an examination?

A Yes.

Q Did you pass the examination?

A Yes, I did.

Q Were you given a diploma?

A Yes.

MR. PADILLA: I'd like to have this marked in evidence. It is what -- it was in Galaxy Foods, a training schedule.

THE COURT: I know, but you can't do it through this witness. Maybe you will get some other witness to do it on. It may be something that the instructors might have been giving.

MR. PADILLA: It was given to the different members of the class so they would know what they would be getting.

THE COURT: This witness says he doesn't know about it so you will have to try with somebody else.

MR. PADILLA: All right.

BY MR. PADILLA:

Q Do you remember during the class you had different types of classes: marketing, warehousing, and administration.

A Yes.

Q Do you remember which parts of the class I taught you?

A No, I don't remember.

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Q Could it have been warehousing,admini stration?

A It could be. It could be warehousing.

Q Do you remember any other people besides the three,you said there were others, do you remember Tom Caulder?

A Yes, I remember him.

Q Do you remember Arty Lee as an instructor in that class?

A Yes, he came the last night of the class and he gave us, -- wished us well and so forth. But not as an instructor.

Q Do you remember Chris Moraganie?

A Yes.

Q Do you remember Franz Quack teaching any part of the class?

A No.

Q Do you remember -- what date did you go to school? Do you remember that?

A It was in October, sometime in October.

Q Sometime in October?

A Yes.

Q Could it have been on or about October 19th?

A It could be. It could be around that time.

MR. PADILLA: I have no further questions, your

Honor.

THE COURT: Now, is there any redirect necessary?

MR. GARMANSKY: No, your Honor.

THE COURT: I suppose you have got somebody waiting; is that right?

MR. GARMANSKY: Yes.

THE COURT: However, in view of the hour, isn't it more practical to try to reassemble here at 2:00 o'clock sharp and let's get going with whoever follows and then -- is this witness excused?

MR. GARMANSKY: Yes, he is, your Honor.

THE COURT: You are excused, Mr. McLean.

(Witness excuse.)

(Luncheon recess.)

AFTERNOON SESSION

MP:jm
Tlpm

MR. GARMANSKY: Good afternoon, your Honor. The Commission would like to call as its next witness, Mr. Steven Silverman.

STEVEN SILVERMAN, called as a witness, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. GARMANSKY:

Q Where do you live?

A 1815 Avenue X in Brooklyn.

Q Where are you employed today?

A Miltex Surgical and Dental Equipment, 300 Park Avenue South.

Q What do you do there?

A I am in charge of the inventory control department.

Q Can you give us a brief description of your educational background?

A I am a high school graduate.

Q Have you ever heard of a company called Galaxy?

A Yes.

Q When, for the first time?

A I believe it was in October of 1972.

Q Under what circumstances did you hear about

Galaxy?

A I heard about it through my wife.

Q What did your wife tell you?

MR. GOIDEL: Objection.

THE COURT: What is the objection?

MR. GARMANSKY: We have Mrs. Silverman here today, she will testify.

THE COURT: Is it essential? All we need to do is indicate he heard it from his wife and what he did after that. If the wife has something to contribute, OK.

BY MR. GARMANSKY:

Q Did you talk to anyone other than your wife about Galaxy?

A Yes, Mr. Arthur Shevack.

Q How did you come to speak to him?

A I spoke to him over the phone.

THE COURT: He called you --

THE WITNESS: I can't recall.

THE COURT: I was going to ask, did he call you or did you call him?

THE WITNESS: I really don't remember.

BY MR. GARMANSKY:

Q Please tell us what you said to him and what he

said to you?

MR. GOIDEL: I object unless it is established he had spoken to Mr. Shevack over the phone previously and could identify his voice.

THE COURT: It may be technical, but it is a good objection. Let me ask you this, at some point during the conversation -- was this the first time you ever spoke to the gentleman?

THE WITNESS: Yes.

THE COURT: Did the gentleman use the name or identify himself?

THE WITNESS: Yes, I asked who it was. When talking on the phone, I always want to know who I am talking to.

THE COURT: The reply was?

THE WITNESS: Arthur Shevack.

THE COURT: All right, go ahead.

BY MR. GARMANSKY:

Q Mr. Silverman, what did Mr. Shevack say to you and what did you say to him?

A He told me that there was a company called Galaxy Foods which he was in and there was a lot of money to be made in the company. Would I be interested in coming down to one of the meetings. I asked him what it was about and he

said I would have to see when I came down there.

Q Did you attend any Galaxy meetings?

A Prior to this?

Q No, did you then attend any meetings?

A Yes, he picked myself and my wife up and brought us down there.

Q When was this meeting?

A Again, October, '72.

Q Where was the meeting held?

A I believe the Statler Hilton Hotel.

Q You testified that Mr. Shevack picked you and your wife up, is that correct?

A Yes.

Q While driving to the meeting, was there any discussion about Galaxy?

A Well, I had asked him questions about it and he told me that he had made a lot of money in the company and there was a lot of money to be made. He told me that he had the car, which was an Eldorado -- that he had just bought this car from his earnings in Galaxy.

THE COURT: Did you say his son was in Galaxy?

THE WITNESS: No.

THE COURT: I'm sorry.

Q Mr. Silverman, do you know the name of the

meeting you attended?

A The Opportunity Meeting.

Q Approximately how many people were present?

A About fifty or seventy-five.

Q Did any individual speak to the people present at the meeting?

A Yes, about three or four speakers.

Q Who spoke to the people present?

A Well, the only ones I can remember were Steven Roth and George Padilla. I don't remember the others.

Q At the meeting you attended, did any speaker explain how a person could earn money in Galaxy?

A Yes, they said that by getting people to buy food from them we would be making a certain amount of commission. And --

Q I am sorry.

A No. Well, basically they said there were two ways to make money, one would be getting people to buy the food and the other would be by recruiting. You would make a certain amount of commission by getting people to join as a distributor or field manager.

Q Do you recall who told you that?

A I believe it was Steven Roth.

Q At this meeting you attended, were you told any

specific figures?

A Well, they had arrived at a figure at the end which came out to sixty thousand dollars. At that point there was a great deal of enthusiasm in the room and applauding, cheering.

Q Now, Mr. Silverman, were any blackboards used at these meetings?

A Yes.

Q Can you tell us how this blackboard was used?

A Well, the speaker put figures on the board saying if you got a certain amount of customers over a certain period of time you would get X amount of money.

Q Were there any figures written on that blackboard?

A Yes, sixty thousand dollars, which was circled.

Q Mr. Silverman, did any speakers explain the retail operation of Galaxy?

A Retail operation?

MR. GOIDEL: Your Honor, may I -- perhaps I didn't understand. I thought these figures were with reference to retail. Are we to assume it was other than retail?

THE WITNESS: No, retail. Isn't that what we are talking about?

Q Mr. Silverman, was there anything else mentioned about the retail operation?

A Well, they told us that the operation would be getting under way within the next few weeks, which I must say was a great influence for me to join the company.

MR. GOIDEL: I move to strike that latter part of the answer as not responsive.

THE COURT: I grant the motion to strike and I certainly will disregard it.

BY MR. GARMANSKY:

Q Do you recall who the speaker was who said this?

A Steven Roth.

Q Now, Mr. Silverman, did you subsequently invest any money in Galaxy?

A Yes.

Q How much money did you invest?

A Seven thousand dollars.

Q Did you attend any more meetings in Galaxy prior to investing?

A Yes, I attended one other Opportunity Meeting and a Step-Up Meeting on Sunday.

MR. GOIDEL: If I may interrupt for a second. I apologize to Mr. Garmansky, the witness, and the Court. Mr. Padilla's attorney on another matter is here and he

would like two minutes to speak to his client.

THE COURT: All right.

Where do you wish to do it? There is a room across the hallway.

(Pause.)

MR. LERNER: Your Honor, this is Arthur Smith, who represents Mr. Padilla on certain other matters and I understand, at least for the purpose of the following statement, Mr. Padilla consents to the arrangement that he represents him as well.

MR. SMITH: I will, for this purpose and this purpose alone. My name is Arthur N. Smith, 16 Court Street.

MR. LERNER: During the recess Mr. Smith and I discussed the possibility of Mr. Padilla agreeing, and Mr. Padilla did agree, to consent to a permanent injunction in this matter without admitting or denying the substantive allegations in the complaint as to violations of Sections 5a and 5c of the Securities Act of 1933; Section 17a of the Securities Act of 1933; Section 10, and Rule 10b5 of the Securities and Exchange Act of 1934. In addition to that, in connection with the securities of Galaxy and any other securities as well -- it is commonly known as a broad

injunction. In addition, Mr. Padilla has agreed to provide us with an affidavit which would elaborate on his financial history and what his present financial status is as well. And I believe that essentially ties up our understanding.

MR. SMITH: I believe that is the understanding we entered into. Can Mr. Padilla say whether it is so on the record, in view of the fact --

MR. PADILLA: It sounds like it.

THE COURT: Mr. Padilla, you have heard what Mr. Lerner stated to the Court about the general outline of your action to bring this action to an end insofar as you are concerned and the requirements being a permanent injunction and the opportunity for the Commission to review certain information and so forth that you will present to them or make available to them?

MR. PADILLA: Yes.

THE COURT: As I understand it, you especially retained Mr. Arthur N. Smith as attorney to represent you in connection with this matter and I take it you have had an opportunity to consult with him about it?

MR. PADILLA: Yes.

THE COURT: It is your desire to conclude this settlement, is that correct?

MR. PADILLA: Yes.

THE COURT: Fully understanding the terms and conditions upon which it is to be accomplished?

MR. PADILLA: That is correct.

MR. LERNER: There's only one other thing, Mr. Padilla has indicated to us that he has essentially no assets and that he is willing to disgorge an amount equal to fifteen hundred dollars, provided the Commission is satisfied with his affidavit reflecting that fact.

Furthermore, we have, and we will enter into a stipulation, if called to testify Mr. Padilla would assert his rights under the Fifth Amendment of the United States Constitution.

MR. SMITH: So stipulated.

THE COURT: Are you satisfied with that?

MR. PADILLA: Yes.

MR. SMITH: Thank you, your Honor.

THE CLERK: Will the Government submit an order?

THE COURT: I assume that will be done with --

MR. LERNER: That is correct.

MR. SMITH: You will notify Mr. Padilla?

MR. LERNER: Notify him and send copies to your office.

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MR. SMITH: Fine.

THE COURT: OK, let's continue.

MR. GOIDEL: Your Honor, before the next question, there is another witness, I believe, sitting in the courtroom. He will be excused?

MR. LERNER: Yes.

(Pause.)

MR. GARMANSKY: Will you please read the last question and answer?

(Whereupon, the last question and answer were read by the reporter.)

BY MR. GARMANSKY:

Q Mr. Silverman, the Opportunity Meeting you attended, the second Opportunity Meeting, was it run similar to the first Opportunity Meeting?

A Yes, it was.

Q Could you explain what the Sunday Step-Up Meeting was?

A Well, at the Sunday Step-Up Meeting, they took us around the warehouse and showed us their warehouse and briefly went over the operation of the company again. And then it was at the end of the meeting they handed out checks to investors in the company.

Q Do you recall who the speaker was who was doing

that?

A Well, the main speaker at the Sunday Step-Up Meeting was Mark Glasser.

Q Mr. Silverman, would you explain to us how these checks were handed out?

A Well, the speaker would announce the name of the investor and the amount of money which he was to receive, that he had made during that week, and whether he was a new investor or had been in the company for a period of time.

Q Is there anything else you can recall occurring at the Sunday Step-Up Meeting?

A Not at the present time.

Q Was there any reaction from the audience when the checks were handed out?

A Yes, again there were people who started applauding.

MR. GARMANSKY: I would like to mark now Plaintiff's Exhibit 35.

THE CLERK: So marked, Plaintiff's Exhibit 35 for identification.

BY MR. GARMANSKY:

Q Do you recognize what has been marked Plaintiff's Exhibit 35?

A Yes, this is my contract with Galaxy Foods.

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Q Did you sign Plaintiff's Exhibit 35?

A Yes, I did.

Q Who was your sponsor, Mr. Silverman, into Galaxy?

A Arthur Shevack.

MR. GARMANSKY: I would like to move into evidence what has been marked Plaintiff's Exhibit 35.

(Pause.)

MR. GOIDEL: No objection.

THE CLERK: Plaintiff's Exhibit 35 is now marked in evidence.

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DIRECT EXAMINATION

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BY MR. GARMANSKY: (Cont.)

Q Mr. Silverman, do you recognize what has been marked and received in evidence, Exhibit 4?

A Yes, the Galaxy Food Manual.

Q Did you receive Plaintiff's Exhibit 4 or a copy of it while you were in Galaxy?

A Yes.

Q When did you receive it?

A After I joined the company.

Q Now, Mr. Silverman, after you joined Galaxy, did you attend any other meetings?

A I was brought down by Mr. Shevack to two or three other Opportunity Meetings with guests that I was brining in to try to join the company.

Q Did these meetings run similar to the meeting that you testified to previously?

A Yes.

Q After you joined Galaxy, Mr. Silverman, did you have any discussions with Mr. Shevack concerning how you could make money in Galaxy?

A Yes.

Q Please, tell us what he said to you and what you said to him?

MR. GOIDEL: May we have a time and place?

Q When was this conversation?

A When did it take place?

Q My question was after you joined Galaxy, but what specific time?

A It was approximately the end of October of 1972.

Q What did he say to you and what did you say to him?

A Well, he told me that I would be able to -- again the same way that he told us at the meetings. He mentioned to me that I would have to get people to try our product and see if I could get anybody in by recruiting them into the company.

There was a certain commission to get a field manager and distributor.

Q Now, you testified that at the first Opportunity Meeting you attended you heard Mr. Roth say that retail would start in a few weeks?

A Yes.

Q After you joined Galaxy, what happened concerning the retail Food program?

A I received a letter in the mail, I believe, stating that November 20, the operation was going to begin,

followed by another one saying it was delayed to the 27th of November whereupon I went down to the warehouse to look at the area I would be able to sell the product at and at that time, Mark Glasser told me I would be unalbe to make any money in the company until at least March of '73 which is approximately four or five months later, because the company was going on a pilot program where they had to get I believe, eight to twelve thousand accounts before they would be able to start this retail operation.

Q Now, Mr. Silverman, was this information that Mr. Glasser told you, was that ever told to you prior to joining Galaxy?

A No, it wasn't.

Q Did you have the necessary funds to invest in Galaxy?

A No, I didn't.

Q Did you ever tell this fact to Mr. Shevack?

A Yes, I did.

Q Please tell us what you told Mr. Shevack concerning this?

A I told him the idea seemed a good idea but I didn't have any money and my wife wasn't working at the time and there wouldn't be any way to invest in the company.

Q When did you tell this to Mr. Shevack?

A Coming home from the meeting in his car and he drove us home.

Q What meeting was this?

A The Opportunity Meeting, the first one I had gone to.

Q Mr.Shevack drove you home, in other words?

A Yes.

Q Now, did Mr. Shevack make any response to you when you told him this?

A Yes. He said there wouldn't be any problem in obtaining the money to invest into Galaxy, because he would take me around to different banks and finance companies and would be able to obtain the necessary cash.

Q Was any particular date set up in which to do this?

A Well, he had picked this up, it was either the next day or the day after, I can't say exactly for sure when, but we had gone to these different banks. He said it would be a good idea to get amounts from -- small amounts from different banks because theprobably would be too hard to get the entire amount from one bank.

Q Did Mr. Shevack pick you up?

A Yes, he did.

Q Did anyone go with yout other than Mr. Shevack and yourself?

A Yes, he had an associate by the name of Peter. I don't know his last name.

Q DId anybody else accompany you?

A Well, my wife.

Q Where did Mr. Shevack take you?

A We went to various banks and finance companies in Brooklyn and Manhattan.

Q Do you recall which ones you went to?

A Well, I believe there were six all together. We didn't get money from two of the banks but Family Finance was one finance company and Household Finance was another and the banks were First National City and Manufacturers Hanover Trus.

Q Now, Mr. Silverman, did Mr. Shevack instruct you in any way concerning these bank loans?

A Yes. He told me to put down the purpose of -- that I wanted the loans for furniture purposes and not for joining Galaxy Foods.

Q Did he say anything else to you?

A Well, he said that -- could you repeat the question again?

Q Did Mr. Shevack instruct you in any other way other than what you just testified to, as to furniture; did he instruct you in any other way concerning these bank loans?

A Well, he told me that he would make up a W-2 form for my wife because she wasn't working at the time that it would be all right, if now, I didn't particularly care for the idea.

Q Did he give you a W-2 form when he took you around to the banks?

A Yes.

MR. GARMANSKY: I'd like to have this marked as Plaintiff's Exhibit 36.

THE CLERK: Document marked as Plaintiff's Exhibit 36 for identification.

MR. GARMANSKY: I'd also like to have this marked as Plaintiff's Exhibit 37, a little slip of paper with handwriting on the front and numbers on the back.

THE CLERK: Plaintiff's Exhibit No. 37 for identification, so marked.

(So marked.)

BY MR. GARMANSKY:

Q I'd like to show you what has been marked as

Plaintiff's Exhibit 36.

Do you recognize it?

A Yes, I do.

Q Would you please tell the Court -- withdrawn.

Q Did you receive Plaintiff's Exhibit No. 36 at any time?

A On the way to the bank Mr. Shevack had handed my wife this, he had handed us this, the W-2 form.

Q Could you please tell us the circumstances surrounding Mr. Shevack giving you Plaintiff's Exhibit 36?

A Well, he told us, we didn't like the idea but he said this was the only way we were going to be able to get the money up to join Galaxy Foods because my wife wasn't working at the time and as I said we didn't go, we really didn't like the idea but we felt that we would be able to pay back the loans which we had been doing anywya.

So we went along with it.

Q Did Mr. Shevack instruct you as to what to do with Plaintiff's Exhibit 36?

A Yes. He told us when we went into the banks, along with writing that the loans were for furniture,to hand them this W-2 form A&M.

THE COURT: A&M?

THE WITNESS: Dental Labs where he said my

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wife would be working.

Q Mr. Silverman, have you ever heard of a company called A&M Dental Labs at the time Mr. Shevack drove you to the banks?

A No.

Q Did your wife, to the best of your knowledge, ever work at A&M Dental Labs?

A In no way.

MR. GARMANSKY: I'd like to offer Plaintiff's Exhibit 36 in evidence.

MR. GOIDEL: No objection.

THE CLERK: Plaintiff's Exhibit 36 now marked in evidence.

(So marked.)

BY MR. GARMANSKY:

Q Do you recognize what has been marked Plaintiff's Exhibit 37?

A Yes, I do. This is a piece of paper which was given by Mr. Shevack to myself and my wife. He said it has the immediate supervisor on it at A&M Dental Labs and the phone number where, in case I need a phone number, the phone number was on here in case there were any questions.

MR. GARMANSKY: I'd like to offer in evidence what has been marked Plaintiff's Exhibit 37.

MR. GOIDEL: No objection.

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THE CLERK: Plaintiff's Exhibit No. 37 now marked in evidence.

(So marked.)

BY MR. GARMANSKY:

Q Mr. Silverman, did you have any discussions with Mr. Shevack concerning A&M Dental Labs?

A Well, you mean prior to this?

Q No, at this time when he gave you Plaintiff's Exhibit in evidence, 36, and Plaintiff's Exhibit 37, did you discuss anything with him about A&M Dental Labs?

A Well, I asked him, you know, what this company was and he said he knew people that were working at A&M Dental Labs and that it really wouldn't be any problem and I shouldn't worry about it becaus- he had used this method before.

Q Now, Mr. Silverman, did you fill out loan applications that day at banks or finance companies?

A We filled out all but one.

Q Which was the one you didn't fill out?

A Household Finance in Brooklyn.

Q Is there any reason why you didn't fill out Household Finance?

A Yes. Mr. Shevack had called upHousehold Finance for me, saying that he was me and he had given them all

the information over the phone and then when I came in all I had to do was really sign it.

Q Did Mr. Shevack tell you this?.

A Yes.

Q Now, these loan applications that you did fill out, did you follow Mr. Shevack's instructions?

A Yes, I did, to, as I said, to put down it was for furniture and show the W-2 form.

MR. GARMANSKY: At this time, I would like to mark in three documents; This one has a cancelled envelope attached to it. There are eight pages.

THE CLERK: Eight-page document with an envelope attached to it marked Plaintiff's Exhibit 38.

MR. GARMANSKY: Next document is 10 pages with an envelope attached to it.

THE CLERK: So marked as Plaintiff's Exhibit No. 39.

MR. GARMANSKY: Next document is 11 pages with a paper clip and I am requesting the Clerk to staple this .

THE CLERK: So marked as Plaintiff's Exhibit No. 40 for identification.

(All documents so marked.)

BY MR. GARMANSKY:

Q I'd like to show you what has been marked as Plaintiff's Exhibit No. 38 and tell me whether you recognize it?

MR. GARMANSKY: On these documents, your Honor, I have kept letters to myself in the capacity with the Commission.

Q Please look through Plaintiff's Exhibit 38.

Do you recognize Plaintiff's Exhibit 38?

A Yes, sir.

Q Would you please tell the Court what it is?

A It is the loan application for Manufacturers Hanover Trust.

Q Does your signature appear on any of the pages on Exhibit 38?

A Yes.

Q Does it refresh your recollection, is this the loan application you filled out when you went with Mr. Shevack to various banks?

A Yes, it does.

Q I'd like to now show you what has been marked as Plaintiff's Exhibit 39.

Please tell me if you recognize it.

A Yes, I do.

Q Please tell the Court what it is?

A Loan application for Family Finance?

Q I ask you now to identify Plaintiff's Exhibit No. 40 and tell us if you recognize it?

A Yes, I do, it is Household Finance.

Q This is the application you filled out that Mr. Shevack took you to the various banks and finance companies?

A Yes.

Q Is your signature on Plaintiff's Exhibit 40?

A Yes.

Q Is your signature on Plaintiff's Exhibit 39?

A Yes.

MR. GARMANSKY: I'd like to move into evidence Plaintiff's Exhibits 38, 39, and 40.

MR. GOIDEL: Without belaboring the point at this moment, and I assume they are all the same, it is my understanding -- is this the application made by this witness?

Annexed to what is offered here are numerous documents, many of which, I think, most of which would not be, or purport to be application of this witness. If what is offered in evidence, the application of te the witness, fine, then I shall have no objection.

If what is purported to be offered at this time are all of the records irrespective of by whom they were prepared of these various firms, then of course I would have an objection.

MR. GARMANSKY: Your Honor, I understand Mr. Goidel's objection. What I have done here is kept these documents that I have received.

I have subpoenaed these banks. I have kept together everything they have sent me. Mr. Goidel is right. Some of the items that appear --

THE COURT: These are internal records of the companies involved that were stapled to the application?

MR. GARMANSKY: Yes.

THE COURT: Are they of any significance here?

MR. GARMANSKY: The documents I have just kept here for the Court's looking at --

THE COURT: Were they subpoenaed?

MR. GARMANSKY: Yes. Most of the documents bear the signature of the witness and/or his wife so those are the documents which are relevant. They comprise 90 percent of it, I believe.

MR. GOIDEL: Why don't we simply take the applications and offer them.

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MR. GARMANSKY: Do you want me to separate them?

MR. GOIDEL: Absolutely, yes.

THE COURT: Let me see them to see what they look like.

These are not originals.

MR. GOIDEL: I am not going to object on that basis.

THE COURT: No, I was under the impression they were subpoenaed, originals were subpoenaed with company files attached.

They are simply a collection of papers as I suppose that counsel would call the loan application file.

MR. GOIDEL: The entire file contains a great deal of extraneous items other than the application.

THE COURT: I really can say I would prefer to have them remain together with the opportunity to you to examine them, to have an opportunity before you cross-examine the witness.

As Mr. Garmansky pointed out except for the transmittal letter by which they got here, a number of them do bear the signature of the witness --

MR. GOIDEL: I don-t believe that's accurate.

Some do and in certain instances what appears to be the signature of the witness really is the handwriting of someone other than the witness, namely a person representing that organization who made the loan.

THE COURT: On their face they would have appeared to be records kept in the regular course of business, while I recognize there isn't somebody here from the respective companies to identify them as such they are pretty clearly appear to be in that, correct.

MR. GOIDEL: Oh my opinion on first blush in looking at these documents, very few of them were prepared by this witness. The other documents might or might not have been prepared by him but it certainly would appear they were prepared by someone else.

We get into an entire situation as to who provided information for the preparation of the documents that were not prepared by this gentleman.

We also get into the question of whether they are in fact records kept in the regular course of business of those institutions.

We get into a whole area of controversy as to docu-ents in evidence. It is not a question of documents kept in the regular course of business of

that institution.

Assuming that they are, that would constitute hearsay. We are concerned with what this witness furnished the lending institutions. If you want me to elaborate further on it, I will take the time if you chose, and let me read it and make very specific objections to particular pieces of paper--

THE COURT: The only objection I can see you can have would be, for instance, with respect to this one or let's see, it is really, I guess, the face in reverse of an internal record, face reverse of an internal record plus a sheet which seems to be an internal record.

The next three are signed by Mr. Silverman or his wife or both of them. All are except those two on the top with respect to Plaintiff's Exhibit 38.

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MR. GOIDEL: May I see it?

THE COURT: The only objection you can have would be that there is no one here to say that these two pieces of paper are authentic copies of records made in the regular course of business -- that they are kept in the regular course of business in connection with the granting of the loan, or the consideration of a loan application.

Now, you may see them, certainly.

MR. GOIDEL: Just that one?

THE COURT: To verify what I say that that is what we are talking about.

MR. GOIDEL: It is not a question, your Honor, and I hope your Honor does not feel that way --

THE COURT: No.

MR. GOIDEL: -- it is not my intention to verify what your Honor has said. It is just that one paper, for example, that Mr. Garmansky did look at, and purported to have the name written rather than printed on it, and Mr. Garmansky even thought it was the witness' signature, but it wasn't the witness' signature, in other words, it didn't call for his signature, and somebody had written his name on it.

MR. GARMANSKY: No, Mr. Goidel --

MR. GOIDEL: It was an investigative report. On

the bottom was handwritten the name of Mr. Silverman.

Your Honor, I have made my objection. Your Honor appears to have overruled it --

THE COURT: Well, legally, as you say, you would have the right to have me ask that those records made in the regular course of business not be admitted because there is no witness here to identify them as such. I am simply pointing out to you that from my examination of them they simply, for the most part, contain information that appears on the application, except as you probably will note, one of them indicated that a telephone call was made to the A&S Dental Supply, and somebody verified the employment of Mrs. Silverman.

Now, that would appear --

MR. GOIDEL: That, your Honor, I frankly didn't even see.

THE COURT: -- Well, I did.

MR. GOIDEL: And certainly I would have th right to have that person take the stand. That is certainly a most prejudicial statement.

THE COURT: Well, do you think that a loan company doesn't at least go to the trouble of calling up employers, given as such, to verify the employment?

MR. GOIDEL: I can't even answer that, your Honor.

I just don't know.

THE COURT: It was testified that Mr. Shevack was the author of that idea.

MR. GOIDEL: I understand he testified to it. That doesn't mean, number one, that the loaning institution did check, or that the loaning institution did rely on it, or any of the other facts. But we open up an entire Pandora's box --

THE COURT: All I am saying is, We can bring down here a witness from, what is it, Household, or whatever the first one is, Family Finance --

MR. GOIDEL: Yes.

THE COURT: -- who would say these are records made and kept in the regular couse of business.

MR. GOIDEL: Fine.

THE COURT: And they reflect what they reflect.

MR. GOIDEL: Right. But that, again --

THE COURT: What they reflect is that in the box, "Employment Verified."

MR. GOIDEL: But that still doesn't go to the question of the truth or falsity of the statements contained in the record.

THE COURT: No, it is admissible -- It only goes to the weight to be given to it. If you want to dispute

it, you can subpoena whoever it was from Family Finance or Household, and bring them here to say that they have never done such a thing, and the records do not faithfully reflect what they show.

MR. GOIDEL: Frankly, those documents would not even educate me as to who it was that physically prepared them. So it is not a question of my having the ability to go to Family Finance, or this one, or that one, to ascertain whose handwriting it is.

THE COURT: It makes no difference. If somebody from Family Finance says, I recognize these documents as records of the company, made and kept in the regular course of business, the fact that the entries there were made by someone else does not prevent them from becoming admissible.

MR. GOIDEL: I agree with your Honor. Nobody is questioning that. If someone were to take the witness stand and say, These records were kept in the normal course of business, that they wouldn't then be introducible. I do not question that one iota. I say that there is another issue that goes beyond the question of their introduction as records kept in the normal course of business, and that is the question of the accuracy of statements written on these documents. If they have a

person who would have to take the witness stand and attest to what was done, how it was done, and that the above recorded what was told to him.

Now, that goes beyond the mere question of their being able to be introduced under business records. The accuracy of those records is still in question, irrespective of whether they are kept in the normal course of business, and we are precluding such an investigation, unless somebody takes the witness stand and does start to testify with regard to facts.

And then we can first ascertain who did prepare this record, who wrote down the name, what did he do, and then we would have the ability to subpoena that person if we so choose to do so.

THE COURT: Well, I see you are insisting on it. I think you will have to detach those records of the Finance company or the bank, as the case may be.

MR. GOIDEL: I have no objection to --

THE COURT: They are not documents that this witness --

MR. LERNER: Your Honor, as I understand Mr. Goidel's objection, it goes not to the admissibility of the records. He agrees there is an exception to the Hearsay Rule, providing the records -- provided we do have somebody on

the stand from Household Finance to say they are held in the ordinary course of business. But he is objecting to the weight which the Court might give to the records.

MR. GOIDEL: Not the weight, but the purpose for which they may be admitted -- not the weight. I am questioning now not their admissibility, but whether the Court can give credence to the statements contained in the records. I will agree what the records -- I will so state that the records that -- I will agree that these records are kept in the normal course of business. But just as there has been testimony with regard to fabrication of facts with relation to one aspect of the application, I have no reason to suspect that there might not be fabrication with regard to other aspects of these documents.

MR. LERNER: That is an objection that can be made each and every time these records are offered. He can go to the books and records of Galaxy --

THE COURT: The point is, there is no one here who would even say that he is familiar with the operation, you know.

MR. LERNER: But Mr. Goidel will stipulate to that.

THE COURT: What was that?

MR. LERNER: That a person would come here and say these records are kept in the ordinary course of business.

MR. GOIDEL: I will so agree.

MR. LERNER: Just as we did with Mr. Lieberman on the stand, we did the same thing, and why should this be treated any differently?

MR. GOIDEL: Your Honor, any written document only speaks through the mouth of a witness. No document, per se, is introduced for the truth or falsity of a statement unless there is a witness on the stand who would attest to what is contained in the record is true. Now, I do not say that these records are not kept in the normal course of business. I will repeat the fact that I so concede the fact for the record, so your Honor does not have that burden. I do not question that.

I say that if the records are introduced, not only as a record kept in the regular course of business, but for the purpose of establishing the truth of the facts contained in them, and that only a witness may so testify, that documents cannot so testify. And as to that end, if it is the purpose of the Securities Exchange Commission to utilize the facts as being true, then somebody must testify.

MR. LERNER: That is not an accurate statement.

THE COURT: Mr. Goidel, I never heard of that version. It is not the sharp hook rule. Maybe I understand it. But when books and records or records made and kept in the regular course of business are identified as such, and the witness says it is the regular course of business to maintain such records, they go into evidence for whatever they say. And they go in for the truth of what they say. That doesn't bar someone from challenging the face of the record --

MR. GOIDEL: True.

THE COURT: -- but unless that challenge is made, unless there is rebuttal of some fact that appears thereon, that is the evidence. Now, you may argue, for example, that the Court, despite what it sees there, and despite what common sense tells us, that a loan institution would ordinarily do, which is the reason why it asks for the present employment of somebody, is not just to fill up in writing the blank spaces, but to follow up with a telephone call or a personal call to make sure that the person is working.

MR. GOIDEL: I agree with what your Honor has said.

(continued on next page.)